

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 1-150

VOLUME 11 of 30

EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

**DISK
ENCLOSED**

1 IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI

2
3 FIRST JUDICIAL DISTRICT

4
5 STATE OF MISSISSIPPI

6 v.

No. B2401-98-00960

7 CURTIS GIOVANNI FLOWERS

8
9
10 BY VIRTUE OF TWO CHANGES OF VENUE, FIRST FROM

11
12 THE CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI, CAUSE NO.
13 CR-97-372

14
15 AND ORIGINALLY FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY,
16 MISSISSIPPI, CAUSE NO. 7450

17
18 *****

19
20 TRANSCRIPT OF THE PRETRIAL, TRIAL, AND POST TRIAL PROCEEDINGS
21 HEARD IN THE ABOVE STYLED AND NUMBERED CAUSES BEFORE THE
22 HONORABLE JUDGE CLARENCE E. MORGAN, III, CIRCUIT JUDGE OF THE
23 FIFTH CIRCUIT COURT DISTRICT, AND A JURY OF TWELVE MEN AND
24 WOMEN, DULY IMPANELED WITH THE DATES OF THE INDIVIDUAL PRETRIAL
25 HEARINGS TO BE NOTED AS EACH APPEARS AND THE DATE OF THE TRIAL
26 BEGINNING ON MARCH 22, 1999, AND CONTINUING THROUGH MARCH 31,
27 1999, AND THE POST TRIAL HEARING ON MAY 27, 1999.

28
29 *****

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(7/8/98)		
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D-E (To Motion to Change Venue)		
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S-3A (Corresponding slide)	1380	1448
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S-4A (Corresponding slide)	1380	
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1			
2			
3			
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5	S-6 (Photograph)	1380	2085
6	S-6A (Corresponding slide)	1380	2085
7	S-7 (Photograph)	1380	2085
8	S-7A (Corresponding slide)	1380	2085
9	S-8 (Photograph)	1380	1451
10	S-8A (Corresponding slide)	1380	1451
11	S-9 (Photograph)	1380	1451
12	S-9A (Corresponding slide)	1380	1451
13	S-10 (Photograph)	1380	1451
14	S-10A (Corresponding slide)	1380	1451
15	S-11 (Photograph)	1380	1451
16	S-11A (Corresponding slide)	1380	1451
17	S-12 (Photograph)	1380	1451
18	S-12A (Corresponding slide)	1380	1451
19	S-13 (Photograph)	1380	1451
20	S-13A (Corresponding slide)	1380	1451
21	S-14 (Photograph)	1380	1451
22	S-14A (Corresponding slide)	1380	1451
23	S-15 (Photograph)	1380	1451
24	S-15A (Corresponding slide)	1380	1451
25	S-16 (Photograph)	1380	1451
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27	S-17 (Photograph)	1380	1451
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3			
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7	S-20 (Photograph)	1380	1453
8	S-20A (Corresponding slide)	1380	1453
9	S-21 (Photograph)	1380	1453
10	S-21A (Corresponding slide)	1380	1453
11	S-22 (Photograph)	1380	1453
12	S-22A (Corresponding slide)	1380	1453
13	S-23 (Photograph)	1380	1453
14	S-23A (Corresponding slide)	1380	1453
15	S-24 (Photograph)	1380	1453
16	S-24A (Corresponding slide)	1380	1453
17	S-25 (Photograph)	1380	1453
18	S-25A (Corresponding slide)	1380	1453
19	S-26 (Photograph)	1380	1453
20	S-26A (Corresponding slide)	1380	1453
21	S-27 (Photograph)	1380	1453
22	S-27A (Corresponding slide)	1380	1453
23	S-28 (Photograph)	1380	
24	S-28A (Corresponding slide)	1380	
25	S-29 (Photograph)	1380	1453
26	S-29A (Corresponding slide)	1380	1453
27	S-30 (Photograph)	1380	1453
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2	<u>EXHIBITS</u> (From Trial)	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
3			
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5	S-32 (Photograph)	1380	
6	S-32A (Corresponding slide)	1380	
7	S-33 (Photograph)	1380	
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9	S-34 (Photograph)	1380	
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11	S-35 (Photograph)	1380	2085
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15	S-37 (Photograph)	1380	2085
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19	S-39 (Photograph)	1380	2085
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21	S-40 (Photograph)	1380	2085
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23	S-41 (Photograph)	1380	2085
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28	S-43A (Corresponding slide)	1380	1492
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3			
4			
5	S-44A (Corresponding slide)	1380	
6	S-45 (Photograph)	1380	
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21	S-52A (Corresponding slide)	1380	
22	S-53 (Photograph)	1380	
23	S-53A (Corresponding slide)	1380	
24	S-54 (Photograph)	1380	
25	S-54A (Corresponding slide)	1380	
26	S-55 (Photograph)	1380	
27	S-55A (Corresponding slide)	1380	
28	S-56 (Photograph)	1380	
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2	<u>EXHIBITS</u> (From Trial)	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
3			
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5	S-57A (Corresponding slide)	1380	
6	S-58 (Photograph)	1380	
7	S-58A (Corresponding slide)	1380	
8	S-59 (Photograph)	1380	
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10	S-60 (Sack that contained		
11	tennis shoe box)	1380	
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13	S-62 (Time card)	1381	2092
14	S-63 (Original check dated 7/5/96		
15	to Curtis Flowers for \$82.58)	1381	1918
16	(No Exhibit Marked with S-64.)		
17	S-65 (Daily ledger sheet dated		
18	7/15/96)	1381	1909
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20	signed 7/23/96)	1381	
21	S-67 (Warning and Waiver or Rights		
22	signed 7/16/96)	1381	2097
23	S-68 (Warning and Waiver of Rights		
24	signed 7/18/96)	1381	
25	S-69 (Brown Bag containing gray		
26	money bag with receipt book)	1381	2199
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28	Winona)	2183	2183
29	(No Exhibit Marked with S-71.)		

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S-73 (Sketch of store area)	1453	1456
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S-76 (Brown Envelope containing spent projectile [says Exb. 66])	1381	1790
S-77 (One white box containing projectile [1B])	1381	1465
S-78 (One white box containing projectile [2B])	1381	1465
S-79 (One white box containing projectile [1C])	1381	1465
S-80 (One white box containing projectile [1])	1381	1465
S-81 (One white box containing projectile [2])	1381	1465
S-82 (One white box containing projectile [3])	1381	1465
S-83 (One white box containing projectile [4])	1381	1465

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<u>EXHIBITS</u> (From Trial)	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
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S-85 (One white box containing live cartridge [1A])	1381	1465
S-86 (Gunshot residue kit)	1381	2148
S-87 (Evidence bag containing projectile in tube)	1381	1747
S-88 (Evidence bag containing projectile in tube from Carmen Rigby)	1381	1747
S-89 (White envelope containing projectile)	1381	1783
S-90 (Fila tennis shoe box with shoes)	1381	1926
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S-92 (Photo lineup shown to Catherine Snow)	1381	1775
S-93 (Photograph of shoe track)	1457	1458
S-94 (Photograph of shoe track)	1457	1458
S-95 (Photograph of shoe track)	1457	1458
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S-100 (Diagram from autopsy report on Robert Golden)		1743
S-101 (Diagram from autopsy report on Bertha Tardy)		1743
S-102 (Diagram from autopsy report on Carmen Rigby)		1743
S-103 (Diagram from Derrick Stewart's autopsy)		1748
S-104 (Statement of James Edward Kennedy)	1884	
S-105 (Invoice from Weed Brothers dated 7/16/96)	2015	2527
S-106 (Consent for polygraph test)	2116	
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D-4 (Copy from <u>Winona Times</u> dated January 16, 1997)	1566	
D-5 (Copy of Reward Poster)	1566	1570
D-6 (Enlarged copy of article entitled "Six Months Today")	1566	1570
D-7 (Map of streets of Winona)	1625	1961
D-8 (Statement of Porky Collins)	1628	
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D-12 (Photograph)	1691	1693
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D-18 (DNA Test Results Chart)		2374

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<u>EXHIBITS</u> (From Trial)	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
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D-20 (Statement of Patricia Hallmon)	2391	
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1 (THE FOLLOWING IS THE ARRAIGNMENT PROCEEDINGS
2 HAD IN OPEN COURT IN WINONA, MISSISSIPPI, ON MARCH 25,
3 1997, IN THE ORIGINAL MONTGOMERY COUNTY CAUSE NUMBERS OF
4 7447-7450 BEFORE THE HONORABLE CLARENCE E. MORGAN, III,
5 CIRCUIT JUDGE. PRESENT FOR THE STATE OF MISSISSIPPI WERE
6 HON. DOUG EVANS, HON. CLYDE HILL, AND HON. WALTER BLECK.
7 PRESENT FOR THE DEFENDANT WERE HON. JOHN GILMORE AND HON.
8 BILLY GILMORE.)

9 BY THE COURT: Who will you have next?

10 BY MR. EVANS: Do you want to go ahead and do
11 Flowers, Curtis Flowers?

12 BY THE COURT: Uh-hum.

13 BY MR. EVANS: Curtis Flowers.

14 BY THE COURT: This is cause number 7447, 7448,
15 7449 and 7450. Hello, Mr. Gilmore.

16 BY MR. GILMORE: Good evening, whatever it is.
17 I'm not real sure.

18 BY THE COURT: Okay, Defendant is present before
19 the bench. Mr. Flowers, have you been served a copy of
20 the indictment in each of these cases?

21 BY THE DEFENDANT: Yes, sir.

22 BY THE COURT: On all four of them?

23 BY THE DEFENDANT: Yes, sir.

24 BY THE COURT: Okay. Mr. Evans.

25 BY MR. EVANS: Yes, Your Honor. In cause number
26 7447, State of Mississippi versus Curtis Giovanni Flowers,
27 indictment for the offense of capital murder, Mississippi
28 Code Annotated Section 97-3-19 (2)(e), the State of
29 Mississippi, County of Montgomery, in the Circuit Court of

1 Montgomery County, October Term, 1996, Grand Jury recalled
2 March 20, 1997.

3 The Grand Jurors of the State of Mississippi, taken
4 from the body of good and lawful citizens of said county,
5 elected, summoned, empaneled, sworn and charged to inquire
6 in and for the county aforesaid at the term aforesaid of
7 the Court aforesaid, in the name and by the authority of
8 the State of Mississippi, upon their oath present that:
9 Curtis Giovanni Flowers, late of Montgomery County,
10 Mississippi, on or about the 16th day of July, 1996, in
11 the county and state aforesaid and within the jurisdiction
12 of this Court, alone or while acting in concert with
13 another or others, did unlawfully, wilfully, feloniously,
14 and either with or without the deliberate design to effect
15 death, kill and murder Bertha Tardy, a human being, by
16 shooting her with a pistol, while engaged in the
17 commission of the felony crime of armed robbery in
18 violation of Mississippi Code Annotated Section 97-3-79
19 and Section 97-3-19(2)(e) as amended against the peace and
20 dignity of the State of Mississippi.

21 This cause number is endorsed a true bill. It is
22 signed by the Foreman of the Grand Jury and the District
23 Attorney. Do you want to go ahead?

24 **BY THE COURT:** Do them all.

25 BY MR. EVANS: Cause number 7448, State of
26 Mississippi versus Curtis Giovanni Flowers, Indictment for
27 the offense of capital murder, Mississippi Code Annotated
28 Section 97-3-19(2)(e). The State of Mississippi, County
29 of Montgomery, in the Circuit Court of Montgomery County,

1 October Term of 1996, Grand Jury recalled March 20, 1997.

2 The Grand Jurors of the State of Mississippi, taken
3 from the body of good and lawful citizens of said county,
4 elected, summoned, empaneled, sworn and charged to inquire
5 in and for the county aforesaid, at the term aforesaid of
6 the Court aforesaid, in the name and by the authority of
7 the State of Mississippi, upon their oath present: That
8 Curtis Giovanni Flowers, late of Montgomery County,
9 Mississippi, on or about the 16th day of July, 1996, in
10 the county and state aforesaid and within the jurisdiction
11 of this Court, alone or while acting in concert with
12 another or others, did unlawfully, wilfully, feloniously,
13 and with or without the deliberate design to effect death,
14 kill and murder Robert L. Golden, a human being, while
15 shooting him with a pistol, while engaged in the
16 commission of the felony crime of armed robbery in
17 violation of Mississippi code Annotated Section 97-3-79
18 and Section 97-3-19(2)(e) as amended against the peace and
19 dignity of the State of Mississippi.

20 This cause number is also endorsed a true bill. It
21 is signed by the Foreman of the Grand Jury and the
22 District Attorney.

23 7449, the State of Mississippi versus Curtis Giovanni
24 Flowers, Indictment for the offense of capital murder,
25 Mississippi Code Annotated Section 97-3-19(2)(e); State of
26 Mississippi, County of Montgomery; in the Circuit Court of
27 Montgomery County, October Term, 1996, Grand Jury recalled
28 March 20, 1997.

29 The Grand Jurors of the State of Mississippi, taken

1 from the body of good and lawful citizens of said county,
2 elected, summoned, empaneled, sworn, and charged to
3 inquire in and for the county aforesaid at the term
4 aforesaid of the Court aforesaid, in the name and by the
5 authority of the State of Mississippi, upon their oath
6 present that: Curtis Giovanni Flowers, late of Montgomery
7 County, Mississippi, on or about the 16th day of July,
8 1996, in the county and state aforesaid and within the
9 jurisdiction of this Court, alone or while acting in
10 concert with another or others, did unlawfully, wilfully,
11 feloniously, and either with or without the deliberate
12 design to effect death, kill and murder Carmen Rigby, a
13 human being, by shooting her with a pistol, while engaged
14 in the commission of the felony crime of armed robbery in
15 violation of Mississippi Code Annotated Section 97-3-79
16 and Section 97-3-19(2)(e) as amended against the peace and
17 dignity of the State of Mississippi.

18 This cause number is endorsed a true bill. It is
19 signed by the Foreman of the Grand Jury and the District
20 Attorney.

21 Cause number 7450, the State of Mississippi versus
22 Curtis Giovanni Flowers, Indictment for the offense of
23 capital murder; Mississippi Code Annotated Section
24 97-3-19(2)(e); the State of Mississippi, County of
25 Montgomery; in the Circuit Court of Montgomery County,
26 October Term, 1996, Grand Jury recalled March 20, 1997.

27 The Grand Jurors of the State of Mississippi, taken
28 from the body of good and lawful citizens of said county,
29 elected, summoned, empaneled, sworn and charged to inquire

1 in and for the county aforesaid at the term aforesaid of
2 the Court aforesaid, in the name and by the authority of
3 the State of Mississippi, upon their oath present that:
4 Curtis Giovanni Flowers, late of Montgomery County,
5 Mississippi, on or about the 16th day of July, 1996, in
6 the county and state aforesaid and within the jurisdiction
7 of this Court, alone or while acting in concert with
8 another or others, did unlawfully, wilfully, feloniously,
9 and either with or without the deliberate design to effect
10 death, kill and murder Derrick Stewart, a human being, by
11 shooting him with a pistol while engaged in the commission
12 of the felony crime of armed robbery in violation of
13 Mississippi Code Annotated Section 97-3-79 and Section
14 97-3-19(2)(e) as amended and against the peace and dignity
15 of the State of Mississippi.

16 This cause number is also endorsed a true bill. It's
17 signed by the foreman of the Grand Jury and the District
18 Attorney.

19 **BY THE COURT:** To each of those charges, how
20 does he plead - guilty or not guilty?

21 **BY THE DEFENDANT:** Not guilty.

22 **BY THE COURT:** On each charge; is that correct?

23 **BY MR. BILLY GILMORE:** That's correct.

24 **BY THE COURT:** Mr. Gilmore, the two Mr.
25 Gilmores, which one of y'all is going to act as lead
26 counsel in this case?

27 **BY MR. JOHN GILMORE:** I am, Your Honor.

28 **BY THE COURT:** All right. My understanding is
29 y'all have been furnished discovery or will be today?

1 BY MR. EVANS: Will be today, Your Honor.

2 BY MR. JOHN GILMORE: Your Honor, we also have a
3 prepared motion for discovery and an order prepared.

4 BY THE COURT: Okay. I tell you what let's do
5 then. I will consider that shortly. Well, let me see it
6 now.

7 BY MR. JOHN GILMORE: They have the filed copy.
8 This is a copy.

9 BY THE COURT: Have y'all examined the motion?

10 BY MR. EVANS: No, sir.

11 BY THE COURT: Okay, I'm going to give y'all an
12 opportunity to look at the Motion. I'm going to set some
13 deadlines today for reciprocal discovery and motions and
14 let them examine those, these motions, and then we will
15 sit down and we will go over some deadlines on what we
16 have got to do to get the case to trial. Okay?

17 BY MR. JOHN GILMORE: Thank you, Your Honor.

18 BY THE COURT: That is it for now. Y'all don't
19 leave though because we are going to talk. Mr. Hill, what
20 is next?

21 ARRAIGNMENT OF THIS CAUSE WAS CONCLUDED.
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1 (ON NOVEMBER 14, 1997, PROCEEDINGS WERE HAD IN
2 KOSCIUSKO, MISSISSIPPI, BEFORE JUDGE CLARENCE E. MORGAN, III,
3 CIRCUIT JUDGE, WHEREIN DEFENDANT MADE A MOTION FOR NEW TRIAL IN
4 ANOTHER CASE INVOLVING THIS SAME DEFENDANT, LEE COUNTY CAUSE
5 NUMBER CR97-369, WHICH WAS FOLLOWED BY A MOTION IN THE PRESENT
6 CASE UNDER CONSIDERATION, THEN KNOWN AS LEE COUNTY CIRCUIT
7 CAUSE NUMBER CR97-372.

8 PRESENT AT THIS HEARING REPRESENTING THE STATE WERE:
9 HON. DOUG EVANS AND HON. WALTER BLECK, DISTRICT ATTORNEY AND
10 ASSISTANT DISTRICT ATTORNEY, P. O. BOX 1262, GRENADA,
11 MISSISSIPPI 38901.

12 REPRESENTING THE DEFENDANT AT THIS HEARING WERE:
13 HON. JOHN GILMORE, ATTORNEY AT LAW, P. O. BOX 151, DURANT,
14 MISSISSIPPI 39063 AND HON. BILLY GILMORE, ATTORNEY AT LAW, P.
15 O. BOX 629, LEXINGTON, MISSISSIPPI 39095, AND THE DEFENDANT
16 HIMSELF WAS PRESENT.

17 THIS TRANSCRIPT PICKS UP AFTER THE MOTION FOR NEW
18 TRIAL IN CAUSE NUMBER CR97-369 WITH THE MOTION TO WITHDRAW
19 CHANGE OF VENUE FILED IN THE PRESENT CAUSE, CR97-372:)

20 **BY THE COURT:** Have y'all got further motions?

21 BY MR. JOHN GILMORE: Yes, Your Honor.

22 (Documents handed to State's Counsel and to the
23 Court.)

24 BY MR. JOHN GILMORE: We have two further
25 motions, but I think they are going to be in the
26 three remaining cause numbers.

27 **BY THE COURT:** Okay.

28 BY MR. JOHN GILMORE: Your Honor, in cause
29 number CR97-370, CR97-371, and 97-372 the Defendants

1 would like to enter a Motion to Withdraw the Change
2 of Venue and to rescind the order changing it to Lee
3 County. The reason that it was changed in the first
4 place was because of the pretrial publicity in
5 Montgomery County. Since that time, Lee County has
6 received substantial media since the previous trial
7 in CR97-369. We do not feel that the Defendant can
8 get a fair and impartial trial in Lee County.
9 It has been publicized throughout the state. The
10 reasons for changing it to Lee County in the first
11 place are now invalid since it has been saturated
12 with more media in Lee County probably than in
13 Montgomery County since then because of the
14 television stations that ran the coverage of the last
15 trial, the radio stations, and also the newspapers.
16 It was thoroughly covered. The trial was thoroughly
17 covered in Lee County.

18 We feel that by moving it back to Montgomery
19 County, it would save the county additional costs.
20 It'll save the Defense additional costs. There is
21 absolutely no reason to keep it in Lee County. If it
22 is not moved back to Lee [sic] County, we anticipate
23 having to file another change of venue motion, and I
24 don't know where this Court will be able to find a
25 place in the state that has not previously heard
26 about this case. We feel that if it's moved back to
27 Montgomery County, a lot of time and expense will be
28 saved by having to go up to, all the way to Tupelo to
29 argue motions, select the jury. In addition, the

1 cost that the Defense and the State has having room
2 and board up there in Montgomery County, we will all
3 be closer to home and won't have that extra expense
4 that the Defendant will have to incur as well as the
5 State.

6 **BY THE COURT:** Of course, expense is not the
7 object, is it, Mr. Gilmore? Getting this man a fair
8 and impartial trial is what this is all about, isn't
9 it?

10 **BY MR. JOHN GILMORE:** Yes, Your Honor. But that
11 is just one of the benefits of moving it back to
12 Montgomery County.

13 (Defense Counsel confer briefly.)

14 **BY MR. JOHN GILMORE:** And also, in Montgomery
15 County-- I mean in Lee County there has already been,
16 I believe, 350 people pulled that now, I am sure,
17 have knowledge of the case because they were polled
18 and questioned in voir dire. We feel that that would
19 substantially limit the number of available persons
20 having to go back up there and draw another venire.

21 **BY THE COURT:** What about the Simon case?

22 **BY MR. JOHN GILMORE:** Simon case?

23 **BY THE COURT:** Uh-hum.

24 **BY MR. JOHN GILMORE:** I'm--

25 **BY MR. EVANS:** 633 So.2d 407.

26 **BY MR. JOHN GILMORE:** If you will elaborate. I
27 think I am aware of that case, but I'm not sure if we
28 are thinking about the same one.

29 **BY THE COURT:** It says when venue is changed,

1 it's changed, and there is no right to have it moved
2 back just because you didn't like the results of the
3 trial.

4 BY MR. JOHN GILMORE: Well, Your Honor, that is
5 not the reason that we are trying to get it moved
6 back.

7 BY THE COURT: Well, why is it you are trying to
8 get it moved back?

9 BY MR. JOHN GILMORE: Well, we are trying to get
10 it moved back so that a fair and impartial jury can
11 be drawn.

12 BY THE COURT: But you filed no affidavits with
13 this Motion showing that there is, where anybody has
14 said that he can't get a fair and impartial trial.
15 That is merely you saying that. There was publicity
16 up there the first time.

17 BY MR. JOHN GILMORE: Your Honor, the Rules
18 require the affidavits in a change of venue. This is
19 a motion to rescind that change of venue.

20 BY THE COURT: Once venue is changed, it's
21 changed. This is a Lee County case now. It's not a
22 Montgomery County case. It is a Lee County case. To
23 change it from there, you must have a motion for
24 change of venue. In any event, you would have to
25 have something to rely on other than your statements
26 that there has been a lot of publicity about the
27 case. There was a lot of publicity before. We got a
28 jury the first day and I think had opening statements
29 the first day. So without any more proof than that,

1 I don't see what grounds you have got, Mr. Gilmore.

2 BY MR. JOHN GILMORE: Your Honor, we will
3 provide affidavits and witnesses if necessary. We
4 didn't-- we thought that the Court would take
5 judicial notice because they definitely knew, y'all
6 are definitely aware of the extensive media that--

7 BY THE COURT: --But that is not the test. The
8 test is not that it was covered by the media no more
9 than it was in the first trial. The test is
10 whether-- what, there must have been 30 or 40 folks
11 on that panel before had heard of the case, and that
12 doesn't exclude them. The question is whether or not
13 they have formed an opinion and whether or not they
14 can be fair and impartial jurors. That is the test.
15 You have got nothing before me that says anybody in
16 Lee County has done that.

17 BY MR. JOHN GILMORE: Yes, Your Honor. Well, we
18 would like--

19 BY THE COURT: --That Motion is overruled.

20 BY MR. BILLY GILMORE: Could we continue the
21 motion until you secure that?

22 BY THE COURT: No, you can file another one.
23 That Motion is overruled. I don't think this motion,
24 there is such a motion as a motion to withdraw change
25 of venue. I think if you want it changed, you have
26 got to file a change of venue motion. So that Motion
27 is overruled.

28 BY MR. JOHN GILMORE: Your Honor, we are going
29 to not argue the other motion at this time. We are

1 going to present it to the Court at a later point.

2 **BY THE COURT:** The double jeopardy motion?

3 BY MR. JOHN GILMORE: Yes, Your Honor.

4 **BY THE COURT:** Okay. Anything else?

5 BY MR. JOHN GILMORE: No, Your Honor.

6 **BY THE COURT:** Okay. See y'all on the 3rd of
7 December at 10 o'clock in Tupelo.

8 BY MR. BILLY GILMORE: Your Honor, we will
9 probably get back about hearing some motions before
10 then.

11 **BY THE COURT:** No, I'm not going to hear any
12 more motions on this case until December the 3rd in
13 Tupelo. We will hear whatever motions you have got
14 on that day after we-- well, at such time-- we are
15 going to get the jury that day-- I mean pull a venire
16 on that day. We will also hear those motions some
17 time on that day, so everybody just be prepared to be
18 there. Okay.

19 MOTION HEARING OF 11/14/97 WAS CONCLUDED
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1 (ON DECEMBER 3, 1997, PROCEEDINGS WERE HAD IN
2 THE LEE COUNTY COURTHOUSE IN TUPELO, MISSISSIPPI, IN CAUSE
3 NUMBER CR97-372 WITH JUDGE CLARENCE E. MORGAN, III PRESIDING.
4 APPEARANCES WERE AS FOLLOWS: REPRESENTING THE STATE OF
5 MISSISSIPPI WERE HON. DOUG EVANS AND HON. KEVIN HORAN;
6 REPRESENTING THE DEFENDANT WERE HON. BILLY GILMORE, HON. JOHN
7 GILMORE, AND HON. HARVEY C. FREELON. THE DEFENDANT WAS ALSO
8 PRESENT.)

9 BY THE COURT: Mr. Freelon, let me see your
10 motion. I don't think I have.

11 (Pause while the Court reads.)

12 BY THE COURT: I don't know what order will be
13 the most appropriate way. Is this the only motion
14 that is filed right now?

15 BY MR. FREELON: Yes. I'm sorry, Your Honor.
16 Notice of Appearance and this Motion is the only
17 motion that is filed at the present time. We do have
18 several forthcoming.

19 BY THE COURT: Okay. All right, let's hear that
20 motion first.

21 BY MR. FREELON: First of all, I need to--

22 BY THE COURT: --Well, I tell you what. Have
23 y'all filed a motion?

24 BY MR. BILLY GILMORE: No, Your Honor. We first
25 became aware of this yesterday.

26 BY THE COURT: Okay.

27 BY MR. BILLY GILMORE: But we will make an ore
28 tenus motion if that's what the Court--

29 BY THE COURT: --No, it has to be done in

1 writing. So the only motion before me is a Motion
2 for a Continuance of the Selection. We are here
3 today to select the venire only, to draw the number
4 of names, which is 350, by Court order that will
5 serve as the panel, the venire, from which a jury
6 will be selected in this case, this case being set
7 for January the 26th, 1998. This is a Motion for
8 Continuance for that, to postpone the simple drawing
9 of the venire. All right, Mr. Freelon.

10 BY MR. FREELON: Well, Your Honor, I guess can
11 you make a ruling, an oral ruling that the law
12 offices of Lumumba and Freelon, Chokwe Lumumba and
13 Harvey Freelon, the Notice of Appearance will at
14 least be entered into order because I am filing a
15 Notice of Appearance as well?

16 BY THE COURT: Yes, sir. The Court notes that
17 there are additional lawyers in this case now and
18 that the firm of Freelon and Lumumba; is that right?

19 BY MR. FREELON: Yes, sir.

20 BY THE COURT: That is the firm name, okay.
21 Harvey C. Freelon and Chokwe Lumumba are now also
22 attorneys in this cause.

23 BY MR. FREELON: Correct.

24 BY THE COURT: And that firm has filed this
25 motion.

26 BY MR. FREELON: Yes. First of all, Your Honor,
27 once again, good evening to the Court. The Motion
28 for Continuance for the Date for the Selection of the
29 Special Venire; this Motion, of course, as you can

1 see, is filed based upon the fact that we as a law
2 firm was retained a couple of days ago; I guess on
3 Monday. And on Tuesday after speaking with the
4 learned District Attorney on yesterday, I realized
5 that the special venire would be called on today.
6 Now and after speaking with the attorneys presently
7 present here at the table today, we realize that
8 there are several motions that has to be filed in
9 this matter. One of those motions, Your Honor, is a
10 change of venue. Now I don't know what has been
11 decided in the past on the change of venue, on the
12 venue issue at all. But we do know that we will be
13 filing a motion for change of venue as well as there
14 will be other motions that will be filed dealing with
15 the death penalty, dealing with the capital murder
16 case, but more specifically, the change of venue.
17 We feel if the Court today go ahead with the special
18 venire, that would prejudice any motion for the
19 change of venue we may have in the future so--

20 **BY THE COURT:** --Why would that, Mr. Freelon?
21 Why would it prejudice that?

22 **BY MR. FREELON:** Your Honor, once you pick the
23 special venire, you are saying to this Court that we
24 are going to have this case over here, Your Honor.
25 We are going to have-- you are saying, to me you are
26 saying that now that I have gone ahead and picked the
27 special venire, there is no need in having a motion
28 for a change of venue.

29 **BY THE COURT:** Well, what if we got into voir

1 dire and found that we could not get a fair and
2 impartial jury here? I could change it then,
3 couldn't I?

4 BY MR. FREELON: Well, Your Honor, I think we
5 can also make that determination before we got into
6 venire.

7 BY THE COURT: Well, you may, but you can also
8 do it at that time. So you are not, how are you
9 prejudiced? If I can do it at the last instance, how
10 are you prejudiced by me--

11 BY MR. FREELON: --Well, Your Honor, only there
12 are what we call economies for the judicial system,
13 Your Honor. Why should we have to go to the
14 unnecessary time of doing that, Your Honor? I
15 mean--

16 BY THE COURT: Well, we don't know that it is
17 unnecessary yet.

18 BY MR. FREELON: Your Honor, but once we-- well,
19 why don't we do the change of venue, and once we have
20 the change of venue motion, Your Honor, it may very
21 well be unnecessary. What we are trying to do, Your
22 Honor, is to stop that from happening. And that is
23 the reason we are saying just in the economies for
24 this Court alone, Your Honor, for judicial economy.
25 It seems like to me the most logical step would be to
26 have the motion for a change of venue, let you rule
27 on your motion for change of venue, and then we come
28 back at a later date, and we can pick the special
29 venire. But it seems like for the logical steps is

1 concerned, it's-- let's have a motion day and come
2 back to this courtroom, and let's deal with, we can
3 deal with the change in venue, special venire at that
4 point in time. How would it prejudice this Court if
5 we continue this special venire, Your Honor?

6 **BY THE COURT:** Okay, I can tell you right now.
7 This case is set for January 26, 1998. It takes-- we
8 have sent out the summons on the previous case six
9 weeks before because the Court has ordered that a
10 questionnaire go out with the jury summons for them
11 to answer so that both counsel can have the benefits
12 of what is in that questionnaire. In order for that,
13 in order for that to go out and be done and for the
14 Clerk to be able to do her business, it is important
15 that we do this today and not at some later date. If
16 we have to draw the venire, another venire, we will
17 just have to draw another venire. But with this case
18 set January the 26th, for you to be able to get the
19 benefits of the Court orders that I have already
20 ordered at the instance of the Defendant and his
21 Counsel, it's necessary that the venire be drawn
22 today unless you can show me some way that you are
23 prejudiced by this.

24 **BY MR. FREELON:** Well, Your Honor, I will be
25 more than-- first of all, Your Honor, another motion
26 will be filed to continue this case.

27 **BY THE COURT:** We will hear that when you file
28 it. It hasn't been filed yet.

29 **BY MR. FREELON:** But that motion will be, that

1 motion is forthcoming as well, so you are looking
2 out-- you are stating to me you are looking out for
3 the benefit of the Defendant because you don't want,
4 you wants to go head on and file the special venire
5 now so we can get the questionnaire out so we can
6 have the jury trial, so we can have the trial in
7 January. Well, Your Honor, right now we will consent
8 to continuing the case, and you would not have to do
9 the Defendant that type of favor. We can agree to
10 continue the case right now.

11 **BY THE COURT:** I'm sure you can, but I'm not
12 going to continue the case until there is some reason
13 for it.

14 **BY MR. FREELON:** Okay, we will file those
15 motions for those reasons.

16 **BY THE COURT:** All right, sir.

17 **BY MR. FREELON:** Well, Your Honor, my--

18 **BY THE COURT:** And let me say this. Just
19 because y'all just got hired is not going to be
20 grounds for a continuance from this Court. Now you
21 need to understand that right now.

22 **BY MR. FREELON:** I understand that. What is
23 going to be grounds for a continuance is that our
24 schedule is busy. At the same time, Your Honor, in
25 the interest of justice--

26 **BY THE COURT:** --Well, you may have to--

27 **BY MR. FREELON:** --in preparing for this case,
28 Your Honor, in the interest of justice in preparing
29 for this case is one of the reasons we will be filing

1 for a continuance as well as the other events and
2 things that we have to do. We have to go through the
3 transcript and everything else, but we will address
4 that issue at that point in time, Your Honor, and you
5 can make a ruling--

6 **BY THE COURT:** --No, I'm going to address some of
7 it today. Okay, go ahead.

8 BY MR. FREELON: You can go ahead, Your Honor.

9 **BY THE COURT:** No, go ahead and finish your
10 argument.

11 BY MR. FREELON: Well, for this Court, I have
12 stated my argument for this Court, and I do think
13 that in the interest of justice that this special
14 venire should be continued until the counsels in this
15 case have time to bring forth their motion and
16 especially a motion for a change of venue on this
17 matter. Thank you, Your Honor.

18 **BY THE COURT:** Okay. Let the record reflect
19 first there has been one change of venue filed in
20 each of these causes originally. That motion was
21 granted, and this cause was changed, the venue was
22 changed to Lee County. There has been another motion
23 of similar nature filed within the last two weeks,
24 and the Court has already ruled on that and elected
25 not to change the venue based on that motion
26 already. And the Defendant is entitled to file such
27 other motions for change of venue as it will, but
28 this case is now set for January 26, 1998. And until
29 that date is changed, we are going to proceed as we

1 have in these other cases.

2 This Motion for a Continuance for a Date of
3 Selection of Special Jury Venire is denied, and we
4 are going to select it today. Ms. Loftin, when do
5 you expect the jury summonses to go out? When did we
6 talk about?

7 BY MS. LOFTIN, CIRCUIT CLERK: Well, we have got
8 most of it ready. We have got the copies made and
9 everything.

10 BY THE COURT: Okay.

11 BY MS. LOFTIN: So you just give us a day, or we
12 can get a letter--

13 BY THE COURT: I believe we did it six weeks
14 before. Is that right, gentlemen?

15 BY MR. JOHN GILMORE: Yeah.

16 BY MS. LOFTIN: About 6 weeks before trial.

17 BY THE COURT: All right. While we are at it,
18 let's address some other things. Any other motions
19 in this case have to be filed by January the 1st. We
20 will have a hearing on those motions within ten days
21 of that date.

22 BY MR. EVANS: Your Honor, just for
23 clarification, one thing I would like clear in the
24 record, this Notice of Appearance is only in one
25 cause. I would like to know if Mr. Freelon and Mr.
26 Lumumba are also co-counsel on the other two counts
27 that are pending before this Court.

28 BY THE COURT: How many cases y'all represent
29 him on?

1 BY MR. FREELON: Your Honor, we are representing
2 the case that we have filed, cause number 97-372.

3 BY THE COURT: Okay, you do not represent him on
4 the other two cases?

5 BY MR. FREELON: No, we do not.

6 BY THE COURT: Okay. Do you represent him--
7 does your contract call for you to represent him on
8 appeal if it should be a conviction?

9 BY MR. FREELON: At the present time, Your
10 Honor, the contract does not call for representation
11 on appeal.

12 BY THE COURT: Just for trial?

13 BY MR. FREELON: Just for trial purposes.

14 BY THE COURT: All right. He has told you what
15 my policy is, I think; haven't you, Mr. Gilmore?
16 Well, not my policy; it's what the Supreme Court
17 said.

18 BY MR. FREELON: Your Honor.

19 BY THE COURT: Uh-hum; yes, sir.

20 BY MR. FREELON: May we get this motion date
21 moved up, please, sir, if we will, because I would
22 like to hear certain motions--

23 BY THE COURT: Before the first of January?
24 Sure.

25 BY MR. FREELON: I think that what you are
26 saying, they are due by January the 1st, but the
27 motion, actually the motion to have a hearing on the
28 motions will be two weeks after that. Am I--

29 BY THE COURT: --Well, no, it wouldn't. I just

1 said within the next ten days. If you file them on
2 January 1st, I can have it on January 2nd if you want
3 to. I don't know what day of the week that is.

4 BY MR. FREELON: Okay.

5 BY THE COURT: That time is your time.

6 BY MR. FREELON: All right, Your Honor. That's
7 what I needed to know.

8 BY MR. BILLY GILMORE: January 1st is on a
9 Thursday, I believe.

10 BY THE COURT: The 2nd is on a Friday.

11 BY MR. FREELON: That's good, Your Honor. But
12 you said by January; as long as the motion--

13 BY THE COURT: --Right. I wouldn't want to hear
14 it on the 2nd just for the simple fact that I won't
15 have a chance to see them nor would the State.

16 BY MR. EVANS: Your Honor--

17 BY THE COURT: --But if you can file them
18 quicker than that, I will have the hearing quicker
19 than that.

20 BY MR. EVANS: That's what I was going to say.
21 If they can file them earlier, we would have no
22 problem hearing them on that date, just so we have
23 time to look at them and prepare.

24 BY THE COURT: I have the whole month of
25 December at your disposal. But what I do want to do
26 is set some deadlines so I know, I want a cutoff
27 date.

28 BY MR. EVANS: Your Honor, one other thing and I
29 know this really isn't--

1 **BY THE COURT:** --Well, first, let me see about
2 that. Do you--

3 **BY MR. FREELON:** No, I understand.

4 **BY THE COURT:** That date suit you all right?

5 **BY MR. FREELON:** You are saying up to January
6 the 1st, but I can come in--

7 **BY THE COURT:** --Yeah, do you want until January
8 1st to file them?

9 **BY MR. FREELON:** Right, but I can come in any
10 time before that for hearing and file them before
11 that and have the hearings anytime before that.

12 **BY THE COURT:** You probably can. Now
13 understand, I think-- yeah, I think that is
14 possible.

15 **BY MR. FREELON:** Let me ask you; what is the--

16 **BY THE COURT:** --I don't have any court dates
17 set, but, you know, how things go in the middle, in
18 the last week in December.

19 **BY MR. FREELON:** Could you, I would like to
20 inquire; what is the procedure as far as if this
21 Court wanted to hold a hearing in another venue? Is
22 that not possible?

23 **BY THE COURT:** In another venue?

24 **BY MR. FREELON:** Well, just a hearing.

25 **BY THE COURT:** Yeah, but now I would assume your
26 change of venue motion is almost going to have to be
27 heard up here.

28 **BY MR. FREELON:** Well, that is true.

29 **BY THE COURT:** But your other motions, we will

1 probably-- I mean we can hear them in other places.
2 I have regularly in this case held them in other
3 places.

4 BY MR. FREELON: Yes, Your Honor.

5 BY THE COURT: And so it's not-- why don't then
6 I tentatively-- let me tell you what. Let me make
7 y'all, y'all get those motions filed by the 31st of
8 December.

9 BY MR. FREELON: They will be.

10 BY THE COURT: And let's have the hearing on
11 them-- let's set the hearing tentatively on January
12 the 5th. How about that? Okay?

13 BY MR. EVANS: Yes, sir.

14 BY MR. FREELON: Yes, Your Honor.

15 BY MR. BILLY GILMORE: Your Honor, where would
16 that be, the other motions? Kosciusko?

17 BY THE COURT: Yeah, we can have those in
18 Kosciusko unless it's a change of venue. If it's a
19 change of venue, which I assume -- I am trying to
20 anticipate what you may do, but I assume that is
21 going to take some witnesses. There will be some
22 testimony, and if it is, it is going to necessarily,
23 almost have to be from up here, so the change of
24 venue will probably have to be here. But we could
25 hear any of those other motions at any time in
26 Kosciusko or Montgomery County.

27 BY MR. FREELON: Why are you-- let me just ask
28 the Court for a point of reference. Why are you
29 assuming that the change of venue has to be here,

1 Your Honor? I mean I know we will be asking for a
2 venue to be changed from here. Is that prejudicial
3 to the Court to have it in another?

4 **BY THE COURT:** Well, no, it's not prejudicial to
5 the Court at all. I will have it wherever you want
6 to have it, but generally, a change of venue, unless
7 it's agreed upon, requires some proof. And maybe I
8 am assuming too much--

9 BY MR. FREELON: --No, I'm talking about--

10 **BY THE COURT:** --but it looks like most of the
11 proof would have to come from up here.

12 BY MR. FREELON: You are right, Your Honor.

13 **BY THE COURT:** I'm at your disposal wherever you
14 want me though. If you want to hear it -- but I need
15 to know.

16 BY MR. FREELON: Right; right.

17 **BY THE COURT:** We will set them for January the
18 5th, and y'all can let me know whether it suits to
19 have them up here or whether you want to have them in
20 Kosciusko or wherever. How about that? That all
21 right?

22 (No response).

23 **BY THE COURT:** Okay, they have got access to
24 y'all's files now; is that right?

25 BY MR. BILLY GILMORE: Yes, sir.

26 **BY THE COURT:** Okay, have you seen the file?

27 BY MR. FREELON: No, sir.

28 BY MR. BILLY GILMORE: Your Honor, we have only
29 met this morning. Mr. Flowers only found out about

1 this a few minutes ago.

2 **BY THE COURT:** I understand.

3 BY MR. BILLY GILMORE: So it has been discussed
4 with Mr. Flowers. He is aware of what is going on.

5 **BY THE COURT:** Okay. When can y'all give them
6 access to that file?

7 BY MR. JOHN GILMORE: Immediately.

8 BY MR. BILLY GILMORE: Most any time they are
9 ready for it.

10 **BY THE COURT:** Mr. Freelon, when do you want to
11 see it?

12 BY MR. FREELON: I would probably arrange a
13 meeting with them this week because they are in
14 Durant which is right down the highway from where we
15 are.

16 **BY THE COURT:** I want you to go ahead and have
17 access, but I would like for you to go ahead and look
18 into it too so you know where we are. The transcript
19 in this case, the transcript of the previous case
20 will be on file up here not next week but the next
21 week. So you will have access to it, both of y'all.
22 There is some evidence here. You are entitled to
23 look at that today. The State, I believe, is
24 duplicating pictures?

25 BY MR. EVANS: Yes, sir.

26 **BY THE COURT:** When were y'all going to furnish
27 those to them?

28 BY MR. EVANS: They have already got copies.

29 **BY THE COURT:** That's right. They have got

1 pictures of those in the file. Is there any evidence
2 in the Crime Lab?

3 BY MR. EVANS: No, sir.

4 BY THE COURT: Where is the other evidence
5 that-- is it just here or--

6 BY MR. EVANS: It's here. The only evidence
7 that is not here is evidence that we did not use, and
8 that is in custody of the Highway Patrol in
9 Greenwood. But everything that we used and intend to
10 use in the second trial as far as evidence is here.

11 BY THE COURT: Okay. Now, but they may want to
12 see that that you did not use.

13 BY MR. EVANS: Yes, sir.

14 BY THE COURT: Can you arrange that?

15 BY MR. EVANS: Yes, sir. It won't be any
16 problem.

17 BY THE COURT: Okay, when do you want to see
18 that, Mr. Freelon?

19 BY MR. FREELON: I will get together with Mr.
20 Evans and probably some time--

21 BY THE COURT: Okay, I would like that done
22 within the next two weeks.

23 BY MR. FREELON: That's fine.

24 BY MR. BILLY GILMORE: Your Honor, presuming we
25 are going with the first appeal, we are probably
26 going to need to keep everything we have got in the
27 file. There is going to have to be some duplication,
28 either from us or from Mr. Evans' office. I don't
29 think we can just give our file to the new counsel.

1 **BY THE COURT:** No, you have got to appeal; I
2 agree. What I would like for you to do is give him
3 access to it, and then he can make what copies that
4 he wants.

5 BY MR. BILLY GILMORE: That's fine; no problem.

6 BY MR. FREELON: Your Honor, let me make one
7 more inquiry. I notice that you said the transcript
8 will be on file here. Will we have not have access
9 to have a copy of the transcript?

10 **BY THE COURT:** Here is what happens. We file
11 the original and the copy will be filed here. That
12 is as a matter of law. The original is going to go
13 to the Supreme Court. The copy will be here, and you
14 will have access to it at any time that you want. If
15 you want to make a copy, you can.

16 BY MR. FREELON: Okay.

17 BY MR. BILLY GILMORE: Your Honor, since the
18 Court has ruled the Defendant is indigent as far as
19 purposes of appeal, could we not have a copy made at
20 the expense of the state?

21 **BY THE COURT:** I have got some question to y'all
22 about that. I mean two weeks ago he said he was an
23 indigent. Now he has hired new counsel. I mean--

24 BY MR. BILLY GILMORE: Well, you will have to
25 explain that to us too, Judge, because I don't know.

26 **BY THE COURT:** What about that, Mr. Freelon? I
27 have declared him an indigent.

28 BY MR. FREELON: Well, Your Honor, he is still--
29 as far as we are concerned, he is still indigent

1 now.

2 **BY THE COURT:** Have y'all been paid?

3 BY MR. FREELON: It's not enough to consider
4 himself not an indigent, Your Honor.

5 **BY THE COURT:** Well, I mean are you retained
6 counsel? I sure didn't appoint you.

7 BY MR. FREELON: We have been retained by the
8 family members, Your Honor, because we are-- actually
9 what is going on, we have another case with the
10 family members, Your Honor, so we -- it's a case that
11 is totally separate from this defense case, and what
12 we decided to do because it is one of the cases that
13 we have -- we will try to work with them on this
14 case. Now on any capital murder cases that, because
15 we are not getting the amount of money that is
16 necessary for the expenses such as whether there is
17 an expert or a transcript or whatever it may be. We
18 are going to file motions - I can tell you that now -
19 to declare this person as indigent where we can have
20 those type of expert fees because we have not -- I
21 mean if we have to disclose any future contract, we
22 may have to do that, but I still consider him
23 indigent, Your Honor. This is more--

24 **BY THE COURT:** --But wait; have you been paid
25 anything? That is the question I have got.

26 BY MR. FREELON: Of course, Your Honor.

27 **BY THE COURT:** Okay, did that come from Mr.
28 Flowers?

29 BY MR. FREELON: No, it did not. And they do

1 have, they do-- and they are at the present time have
2 groups of people that is trying to raise money on his
3 behalf to try to help him out.

4 **BY THE COURT:** Okay. Due to the fact that both
5 lawyers, both firms are located a long distance from
6 Tupelo and it is necessary that that one-- well, that
7 one set of lawyers has got to have it for the appeal
8 and the other set of lawyers, all four lawyers need
9 it for the prosecution of these other cases, I'm
10 going to provide that one more copy be made. And I
11 tell you what let's do. I'm going to furnish, we
12 will furnish that to you, Mr. Gilmore, and then y'all
13 can make the appropriate copies for Mr. Freelon, or
14 Mr. Freelon can make a copy for himself.

15 BY MR. FREELON: That's good.

16 **BY THE COURT:** And he can have access to yours.
17 Okay?

18 BY MR. FREELON: That is good.

19 **BY THE COURT:** If you are going to have those--
20 the motions that you just talked about having about
21 investigators and all that kind of stuff and
22 declaring him indigent for those purposes and all
23 like that, we need to go ahead and hear those. I
24 know you will have other motions, but it might be
25 necessary, it would probably be appropriate that we
26 hear those motions before the first of the year.

27 BY MR. FREELON: Your Honor, I plan on getting
28 all the motions as soon as possible, I mean very
29 soon.

1 **BY THE COURT:** Okay.

2 BY MR. FREELON: Any and all motions in this
3 case.

4 **BY THE COURT:** Okay. Because if I allow that, I
5 mean if I were to allow an investigator, he would
6 have to have time to investigate.

7 BY MR. FREELON: Absolutely.

8 **BY THE COURT:** Okay. The State can prepare an
9 order setting the motion deadline for December 31st
10 and a hearing date for the 5th, and we will be
11 flexible about that if they are filed sooner.

12 BY MR. HORAN: Who do we send it to for
13 approval, Your Honor?

14 **BY THE COURT:** You can send it to me. It
15 doesn't have to be approved. Just draw it and send
16 it to me.

17 BY MR. EVANS: Your Honor, one thing I would
18 like to have clear in the record; even though this is
19 probably not the proper time to do it, I think it may
20 be necessary to do it now. Since Mr. Freelon has
21 mentioned about having conflicts, I would just like
22 something clear in the record today with it being
23 understood in the record that the very day that he
24 filed his notice of appearance he knew when this case
25 was set for trial.

26 **BY THE COURT:** Well, let me say this. This case
27 was set, has been set for January the 26th, 1998, set
28 by his Counsel at that date. As at least of this
29 time, the new firm is associate counsel, and you will

1 have to arrange your schedule to accommodate this
2 case because it's set for January 26 until such time
3 as I continue it. I'm not going to continue it for a
4 prior setting.

5 BY MR. FREELON: Wait; wait. We are the
6 associate counsel, Your Honor? At this time we are
7 the associate counsel? Did I hear you--

8 BY THE COURT: --Well, you are associated
9 counsel. Let me put it a little different. No, you
10 are not associate counsel.

11 BY MR. FREELON: And you are making a ruling
12 that you will not set, continue a trial for a prior
13 setting? That is your ruling from the Court today?
14 I mean is that--

15 BY THE COURT: Yeah, my ruling is it is set for
16 January the 26th. They already have two Counsel that
17 have been hired on this case, and that is set with no
18 disagreement from them. If you take this case, you
19 take it subject to that date on January 26th. The
20 Supreme Court has ruled on that. All you have got to
21 do is look at those cases.

22 BY MR. FREELON: Well, Your Honor, there will be
23 a motion filed on this, and we will go on the record,
24 and you can make your ruling at that point in time,
25 and we can deal with that on appeal, whatever it may
26 be. Thank you.

27 BY THE COURT: Sure. That is fine. Anything
28 else?

29 BY MR. EVANS: Nothing from the State, Your

1 Honor.

2 BY THE COURT: Okay. Let's go downstairs and
3 pull the venire.

4 (WHEREUPON, THE COURT, ALL COUNSEL, AND THE
5 DEFENDANT WENT DOWNSTAIRS TO THE CIRCUIT CLERK'S OFFICE TO DRAW
6 THE SPECIAL VENIRE. THE CIRCUIT CLERK, JOYCE LOFTIN, AND
7 DEPUTY CLERK, CAROL HORTON, WERE ALSO PRESENT FOR THE
8 FOLLOWING:)

9 BY MR. FREELON: Before my client leaves, is
10 there any way I can speak to my client privately?

11 BY THE COURT: Sure. Sure can. Okay.

12 BY MS. LOFTIN: You ready? Okay.

13 BY THE COURT: Gentlemen, they are ready. She
14 is going to pull it on the computer.

15 (Mr. Freelon and Mr. John Gilmore confer
16 briefly. Ms. Horton is typing in the commands to the
17 computer for the jury to be drawn.)

18 BY MR. FREELON: Well, Your Honor, I'm going to
19 make for another second, I have already made one
20 objection in the form of a motion, but I do want to
21 make another objection. I do object to the pulling
22 of the special venire on today's date.

23 BY THE COURT: Okay, for what reason?

24 BY MR. FREELON: For the very reason that the
25 motion for change of venue has not been heard as of
26 yet.

27 BY THE COURT: Okay. That motion is overruled.
28 However, I reserve the right to revisit the change of
29 venue motion. The pulling of this special venire

1 will not affect the rights of the Defendant to file a
2 motion for change of venue nor for me to change it,
3 if the appropriate facts are presented to the Court.
4 Any other objection to the way she is pulling it?

5 BY MR. FREELON: No, let her proceed.

6 BY MS. LOFTIN: How many copies?

7 BY THE COURT: How many did we do last time?

8 BY MS. LOFTIN: How many did we do last time?
9 Do you remember? We did some extra ones.

10 BY MS. CAROL HORTON: We have to have three. It
11 seemed like I did them five copies; seemed like I did
12 eight; I can't remember.

13 BY MS. LOFTIN: Well, just do eight or ten; it
14 doesn't matter. Just go ahead and do ten.

15 BY MS. HORTON: What?

16 BY MS. LOFTIN: Ten, and we will have plenty.

17 BY MR. FREELON: This is picking it randomly;
18 correct?

19 BY MS. LOFTIN: Right.

20 BY MR. FREELON: Can I get around here, Your
21 Honor?

22 BY THE COURT: Sure, go right ahead.

23 BY MS. HORTON: When we start off at the first
24 of the year, we start off with jury number one, and
25 we have got to panel number 44. So that's where that
26 number comes in. We just have one jury box, number
27 one. We are picking 350, and it's picking it
28 randomly, and it will print it out randomly just like
29 it picks it and then an alphabetical list.

1 BY MS. LOFTIN: The way it's going to print it
2 is the way it picks it. It will not be alphabetized,
3 but she can do you an alphabetized list, and she will
4 do us an alphabetized list. But the list you are
5 going to see first of all is just exactly like it was
6 chosen or selected. She will show you. They are
7 picked at random. They are not in any kind of
8 order.

9 BY MR. FREELON: Will the last 350 that was
10 picked in the last venire be included in this one?

11 BY MS. LOFTIN: Oh, no, uh-uh. You mean the
12 last 350? No. What we do at the beginning of each
13 April, we select 10,000 names out of our jury, our
14 complete voter roll, and they are put in a wheel and
15 then we draw.

16 BY MS. HORTON: Here is the ones picked last
17 time. Wasn't October 13th the trial? It was jury
18 15.

19 BY MS. LOFTIN: That is number 15.

20 BY MS. HORTON: These are completely different
21 people. After they are pulled one time, we don't
22 pull them back out. Like we had 10,259 in the jury
23 wheel. We have already used 6,000 something. We
24 have got 4,000 something left.

25 BY MS. LOFTIN: This is our 44th panel.

26 BY MS. HORTON: Uh-hum, and I'm going to print
27 it now. It will print. Let me change my copies to
28 ten and change my date. And as soon as it's clear,
29 it will print it. The printer is in the next room in

1 there. It prints address labels to send each one.
2 That is pretty much it.

3 (NOTE: Mr. Freelon stood and looked over Ms.
4 Horton's shoulder as she typed.)

5 BY MS. LOFTIN: You can come on in here if you
6 would like.

7 (Mr. Freelon goes in the next room where the
8 printer was located. Off the record while waiting on
9 the printer).

10 BY MS. HORTON: It should be printing. Do you
11 hear it started printing?

12 BY MS. LOFTIN: No, it hasn't started yet.

13 BY MS. HORTON: You don't hear it yet?

14 BY MS. LOFTIN: I don't think it is. Yes, it
15 is. Now it is.

16 BY MS. HORTON: It'll take a good while to print
17 10 copies of 350.

18 (Off the record while copies are printing.)

19 BY MS. LOFTIN: Here are the first five. Who
20 all needs one?

21 (Hands copy to Mr. Evans, to John Gilmore, and
22 to Mr. Freelon.)

23 BY MS. LOFTIN: We are going to do an
24 alphabetized list. So just as soon as this list is
25 finished printing, we will do an alphabetized list.

26 BY THE COURT: Mr. Freelon, have you got any
27 other objection, any objections to--

28 BY MR. FREELON: No other objections.

29 BY THE COURT: Okay. You are through with the

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Court Reporter then?

BY MR. FREELON: Through with the Court
Reporter.

PROCEEDINGS ON DECEMBER 3, 1997 WERE CONCLUDED.

1 (COURT HAVING BEEN DULY OPENED ON JANUARY 5,
2 1998, AT APPROXIMATELY 10:00 A.M. IN TUPELO, MISSISSIPPI, THE
3 COURT PROCEEDED ON MOTION HEARING IN LEE COUNTY CIRCUIT COURT
4 CAUSE NUMBER CR97-372, WITH THE FOLLOWING COUNSEL PRESENT:
5 REPRESENTING THE STATE OF MISSISSIPPI WERE HONORABLE DOUG EVANS
6 AND HONORABLE KEVIN HORAN; REPRESENTING THE DEFENDANT WERE
7 HONORABLE CHOKWE LUMUMBA AND HONORABLE HARVEY FREELON.
8 HONORABLE JOHN GILMORE, FORMER COUNSEL FOR THE DEFENDANT, WAS
9 ALSO PRESENT AT THE BEGINNING OF THE HEARING. THE DEFENDANT
10 WAS ALSO PRESENT. PROCEEDINGS IN OPEN COURT WERE AS FOLLOWS:)

11 BY MR. JOHN GILMORE: May I proceed, Your
12 Honor?

13 BY THE COURT: Yes, sir.

14 BY MR. JOHN GILMORE: Your Honor, I am bringing
15 a motion on behalf of myself and my father, Billy
16 Gilmore, on a Motion to Withdraw. There has been
17 entered a Notice of Substitution of Counsel in this
18 cause. Mr. Chokwe Lumumba and Mr. Harvey C. Freelon
19 have entered an appearance. They have signed an
20 agreement that they are to be substituted as
21 counsel. The Defendant has requested that they be
22 named counsel and that we will withdraw in this
23 cause. We request that they be allowed to take over
24 the case and that myself and Mr. Billy J. Gilmore be
25 allowed to withdraw from this cause as attorneys of
26 record.

27 BY THE COURT: You are talking about for this
28 cause only?

29 BY MR. JOHN GILMORE: At this point, yes, Your

1 Honor.

2 **BY THE COURT:** Yes, sir.

3 BY MR. LUMUMBA: Judge, we, of course, join in
4 that motion, and we have filed the Motion to
5 Substitute Counsel which in addition to other things,
6 also indicates that we believe it's a serious
7 possibility that prior counsel may need to be called
8 as witnesses in this case. And if that is the case,
9 they obviously could not be counsel and be called as
10 witnesses also. So we do join in the motion.

11 BY MR. EVANS: Your Honor, we would object to
12 the Gilmores being let out of this for several
13 reasons. The first reason is that they were paid to
14 represent the Defendant on four counts. This Court
15 has previously ruled that that contract was going to
16 be upheld, that they were in this case for all four
17 counts. The Defendant, to protect his rights, has an
18 absolute right to know that he has hired and paid all
19 four of these counts, and he has an absolute right to
20 have all four of them represented, and he does not
21 have to let anybody out. He has already paid the
22 Gilmores according to this Court to represent him in
23 this cause. That is one reason.

24 Another reason is it is my understanding from
25 our last hearing that Mr. Freelon said that he and
26 Mr. Lumumba had conflicts on the date that this case
27 has already been set. I know the Gilmores have no
28 conflicts because this case has been set for a
29 substantial period of time, and it would be improper

1 to let them out in effect to try to get a continuance
2 for the other counsel in this case where they have
3 already been in the case; they are prepared to go
4 forward with the case because they announced to the
5 Court probably seven or eight months ago that they
6 were ready and prepared to try all four cases at that
7 time.

8 BY MR. LUMUMBA: Judge, we have joined at least
9 on behalf of the Defendant here and ourselves. First
10 of all, the Defendant is the one that is seeking this
11 motion. He is in support of this motion. The amount
12 of money which has been paid to counsel for the
13 representation of him is not an obstacle as far as
14 the Defendant sees in making this adjustment and
15 substituting his counsel. Indeed, speaking as a
16 person who has a little bit of experience in these
17 areas, from what I understand the amount of money he
18 was paid is, would be woefully inadequate to get
19 competent representation in four different cases at
20 four different times.

21 Of course, you can pay an attorney to do
22 anything, and the amount of money is certainly not
23 statutorily mandated to be in any particular amount.
24 But given the experience of what these cases take,
25 the kind of energy they take, the kind of commitment
26 they take, the kind of sacrifice that a counsel must
27 put into his office or his practice in order to
28 practice this case, and if he intends to be open
29 after the case is over, it would be absolutely

1 impossible for that kind of money to cover competent
2 representation for several separate cases as opposed
3 to cases that were all being tried at the same time.

4 But secondly and more importantly, counsel
5 perhaps did not respond to, and perhaps he didn't
6 respond to it if he didn't have a response to the
7 fact that now we are indicating that these attorneys
8 would be called as witnesses in this case. If the
9 attorneys are going to be called as witnesses in a
10 case, certainly our client, any interest our client
11 has got, the weight of that interest is much greater
12 in perspective to the question of being able to call
13 witnesses, witnesses which he has a statutory and a
14 constitutional right to compel to come forth. And so
15 that being the case, he does not need to have these
16 witnesses compromised by the fact that they are
17 representing this given case at this particular time,
18 and so I think that that almost ends all inquiry.

19 Secondly, we don't want to-- we want to consider
20 this motion on its own merits. We are not trying to
21 boot strap this motion with any kind of
22 considerations of whether this case should or should
23 not be continued. We have got a lot to say on that
24 question, a whole lot to say on that question. But
25 as far as this particular Motion is concerned, this
26 Motion is not to be boot strapped to any other
27 motion.

28 The reality is that there is a clear court cause
29 here, and I would think anybody would be treading on

1 very dangerous grounds in terms of an appellate
2 matter to stare into the face of an allegation that
3 we are going to call these men as witnesses and then
4 to force them to continue as his counsel and thereby
5 deprive him -- and I would indicate this.

6 Part of the issue that they would be witnesses
7 to relate very specifically to what I understand to
8 be witnesses which were presented at the last trial
9 who claimed to have heard this Defendant make a
10 statement while he was in custody. We believe that
11 the present counsel have information relevant to that
12 inquiry which would be persuasive in a hearing to
13 dismiss or to preclude these statements from coming
14 into evidence as well as, should that motion fail, be
15 persuasive in front of a jury on the issue of whether
16 or not these statements were actually made.

17 So, and that is just part of what we think that
18 their testimony would be relevant to. Several
19 witnesses who they have talked to made statements who
20 in some instances have now tried to compromise their
21 statements, and we would need impeachment of their
22 testimony at trial.

23 So, you know, I don't see where there would be
24 much of an issue on this, and it's not a question of
25 a fee. A fee is a very minor issue when it comes to
26 a question of a constitutional right to be properly
27 represented at trial and to have the ability to call
28 any possible witnesses.

29 BY MR. EVANS: Your Honor, if I may in response

1 to that; I think opposing counsel well knows that you
2 can't come in the courtroom and just say we may call
3 somebody as a witness. If they anticipate calling
4 Defense Counsel Gilmores as witnesses in this case, I
5 would like to know today a proffer of the reason they
6 expect to call them, what they would expect them to
7 testify to. If they are going to be listed as
8 witnesses, I would request that that be furnished to
9 us immediately on discovery along with any statements
10 that they would expect to testify to because there
11 were no statements furnished to us in discovery prior
12 to this on any of these cases by the Gilmores. And
13 if they have any, that is going to be a discovery
14 violation that we would object to.

15 BY MR. LUMUMBA: Well, Judge, first of all, I
16 have already spoke to one of the issues they would
17 testify to, and secondly, I have indicated--

18 BY THE COURT: --What was that, Mr. Lumumba?

19 BY MR. LUMUMBA: The issue of the statements
20 allegedly made by, in custody, in custody statements
21 allegedly made by our client to what we generally
22 call jailhouse snitches, people who generally either
23 are put there by the police in order to get
24 statements or who basically live off of--

25 BY THE COURT: --I understand all that. What
26 can they testify to?

27 BY MR. LUMUMBA: They can testify to
28 conversations they with had with our clients before
29 and after and to his state of mind and to the

1 directions that he was given and to the fact that
2 -- and we believe that their testimony would be
3 persuasive to the issue that it was almost, it was
4 extremely unlikely that their client would have made
5 any kind of statements to any jailhouse snitches
6 given what he had been told and given what his
7 responses were to what he had been told. But
8 secondly--

9 **BY THE COURT:** --Let me ask you a question about
10 that if I may.

11 BY MR. LUMUMBA: All right.

12 **BY THE COURT:** How would that evidence, if they
13 can testify to that, if they are willing to testify
14 to that, how would that be admissible?

15 BY MR. LUMUMBA: The conversation of what they
16 said to my client?

17 **BY THE COURT:** Their conversations with their
18 client, how would that be relevant?

19 BY MR. LUMUMBA: Right. That is admissible.
20 The only reason that is not admissible is because the
21 client has a privilege, has an absolute
22 attorney-client privilege.

23 **BY THE COURT:** Why wouldn't it be hearsay?

24 BY MR. LUMUMBA: It's not what he-- what they
25 said to a person is not hearsay. What they said to
26 the client is not hearsay.

27 **BY THE COURT:** What the Gilmores said?

28 BY MR. LUMUMBA: That's correct.

29 **BY THE COURT:** Then why would it be relevant?

1 BY MR. LUMUMBA: It would be relevant because it
2 would show what our client was aware of at the time
3 that these snitch conversations allegedly took place,
4 and I would, you know, indicate to the Court that in
5 this case I think you have one conversation which is
6 supposed to have taken place months after the client
7 was incarcerated at a time where he was well
8 represented, had had several conversations on this
9 issue. But the-- so that is relevant for that
10 reason.

11 But secondly, they have relevant testimony. I'm
12 not saying that they wrote statements down. Whether
13 they wrote statements down is another question, and
14 where you are talking about discovery violations to a
15 case where they have already had a conviction and
16 which is now headed for appeal, that strikes me as
17 being somewhat irrelevant too.

18 But irrespective of all that, we have an
19 absolute obligation to put on anyone who can impeach
20 witnesses who have statements which may be, who have
21 made statements in the past which are supported by
22 our client's case. Now let me say this. In the
23 conversations that we have had with the Gilmores, I
24 think there was at least two or three different cases
25 where that appears to be the case. We will, when
26 it's appropriate, provide the DA with that
27 information. We have just gotten in the case.

28 BY THE COURT: No, sir. You have been in a
29 month now.

1 BY MR. LUMUMBA: Which means we have just gotten
2 in the case. In death penalty case vernacular that
3 means we just got in the case. So the point is, is
4 that we have, you know, we have a transcript here. I
5 don't know; I can't pick it all up at the same time,
6 a fairly voluminous transcript which has to be read
7 in order to make all the determinations as well as
8 various different motions which have previously been
9 filed and a number of other documents which are in,
10 which are here before me in this box; some of it is
11 here. Part of it is here. So we have to be able to
12 analyze all of this information before we make our
13 final determinations on who we will call and who we
14 won't call. But what I'm telling this Court right
15 now is that our conversations with the Gilmores to
16 this point convinces us that they would be called as
17 witnesses.

18 And then secondly, we don't have to say in order
19 to make this a bona fide motion that we are
20 absolutely for certain going to call anyone. The
21 Defendant doesn't absolutely for certain have to have
22 a case. So, you know, we don't have to throw in our
23 right not to engage in presentation of evidence in
24 order to make this, a motion. But what I am
25 indicating to the Court is that clearly there is at
26 least two areas where the Gilmores' testimony is
27 relevant as far as present counsel is concerned.

28 Secondly, there are, you know, I think they have
29 made a motion to withdraw from the case. We are

1 prepared to represent the client. The client wants
2 us to represent him if I'm not mistaken. If there is
3 any question about that, he is open to inquiry. And
4 so we are prepared to get into the case.

5 And opposing counsel can't choose clients'
6 lawyers for any particular case. They can't decide
7 who is going to be his lawyer. They can't decide
8 when he will cease to have that person as his lawyer
9 or when he will want someone else. In fact, if I was
10 him, I would be almost ashamed to make that kind of a
11 stigma, to take that kind of position. It sounds as
12 if they have, you know, that they are trying to
13 choose the opposition. So what I would say is that
14 it is clear that this Motion should be granted.

15 BY MR. EVANS: Your Honor, as far as who
16 represents this case, I don't care. But the State is
17 prepared to go forward. We are ready to go forward.
18 I think the Defendant is entitled to have all four of
19 these lawyers that he has paid sit at counsel table
20 and assist him because he has paid all four of them.

21 BY THE COURT: Well, that is kind of something
22 for him to decide though, isn't it? I mean he--

23 BY MR. EVANS: No, sir, not when it comes to a
24 fraud to try to get a continuance in a case.

25 BY THE COURT: But nobody has asked for a
26 continuance in this case yet.

27 BY MR. EVANS: Yes, sir.

28 BY THE COURT: At this point in time, at this
29 point in time nobody has asked that.

1 BY MR. EVANS: One other point that I would like
2 to make which I am sure this Court is aware of:
3 Discovery has been furnished in this case in all four
4 cases, not just the case that has been tried, and for
5 opposing counsel, Mr. Lumumba, to come in here now
6 and say he doesn't have to give us discovery until he
7 decides he wants to, I believe he knows better than
8 that.

9 BY THE COURT: Well, I can assure you I'm going
10 to address that. One question for you, Mr. Lumumba.

11 BY MR. LUMUMBA: Yes, sir.

12 BY THE COURT: It may lead to more, but I'm
13 going to start with one. Mr. Freelon, when he was
14 here on the 3rd -- there is not a motion for
15 continuance filed in this case. He made some
16 statements to the Court at that time about conflicts
17 and whatever. I want to know from you whether or not
18 y'all have any conflicts with the date of January
19 26th.

20 BY MR. LUMUMBA: There are other things which I
21 have scheduled which probably would conflict with
22 this date.

23 BY THE COURT: I mean trials.

24 BY MR. LUMUMBA: You are talking about the 26th
25 of January?

26 BY THE COURT: Yes, sir.

27 BY MR. FREELON: Do you want me to address that?

28 BY MR. LUMUMBA: Pardon?

29 BY MR. FREELON: Do you want me to address that?

1 BY MR. LUMUMBA: Yes, go ahead.

2 BY MR. FREELON: Well, Your Honor, how are you
3 doing, first of all this morning? I haven't had a
4 chance to speak to you today.

5 BY THE COURT: Good morning, Mr. Freelon.

6 BY MR. FREELON: Before that time, we had had--
7 of course, we do know that criminal matters always
8 come before civil matters. But I have personally, as
9 well as Mr. Lumumba - we are in practice together - a
10 civil matter that was pending probably three or four
11 days before this trial, and that civil matter may not
12 last but a day to a day and a half. But, of course,
13 there is preparation for that civil matter as well--

14 BY THE COURT: What day is it set for?

15 BY MR. FREELON: The 21st, the 21st and 22nd,
16 22nd and 23rd. But, of course, there is preparation
17 that goes into-- even though it's a civil matter, it
18 is preparation that goes into that civil matter. As
19 well, Your Honor, and the main thing is the
20 preparations for that civil matter as well as the
21 preparation for this criminal matter. And, of
22 course, like I stated in the motion to continue,
23 there are other matters.

24 BY THE COURT: I don't have a motion to
25 continue. Nobody filed one of those with me.

26 BY MR. FREELON: Your Honor, I sent you; I sent
27 you a package. That package should have a motion to
28 continue in it.

29 BY THE COURT: There is a Motion to Continue the

1 Motion Date.

2 BY MR. FREELON: And there is a Motion to
3 Continue as well, Your Honor.

4 BY THE COURT: Well, okay, it says hearing date,
5 okay.

6 BY MR. FREELON: There is a Motion to Continue
7 the Hearing Date as well as a Motion--

8 BY THE COURT: --But I thought that, hearing
9 date, I thought that was a Motion to Continue this
10 hearing.

11 BY MR. FREELON: It should have been two motions
12 in there, I thought.

13 BY THE COURT: Well, I didn't get the one about
14 continuing the trial. I don't think the State did
15 either.

16 BY MR. EVANS: I didn't. We didn't get one.

17 BY MR. HORAN: Your Honor, if we could,
18 whenever-- you know, last time we had a number of
19 motions, if the Court will give us some indication as
20 to the number or what order you are going to go in,
21 it may keep it simple for both parties to keep up
22 with these motions. I know last time you numbered
23 the motions before we got started, and I would ask
24 that you do that before we actually get involved in
25 the motions. It's hard for me to keep up with them.

26 BY THE COURT: Okay, well, just do the best you
27 can, Mr. Horan.

28 BY MR. HORAN: Well, I will try.

29 BY MR. FREELON: Your Honor, all right, I know

1 that I prepared a motion in the midst of all of these
2 motions in trying to, as you see, meet certain
3 deadlines and get these motions and try to find out
4 the different motions that has to be filed and
5 talking to the Gilmores in all their preparations. I
6 have filed -- I'm not going to say I filed it.
7 Obviously, you don't have it, and the State is saying
8 they don't have it, so I can't say that I filed a
9 motion, but I can certainly say that I have drafted
10 that motion. And whether that motion went in at the
11 time of all the other motions in the time of the
12 preparations for this trial, that is one of the
13 reasons we are going to be coming before this Court
14 to ask for that motion to be continued is because of
15 all the things that is going on. But I am certainly
16 sure that I drafted that motion, but because of the
17 voluminous amount of information that we have, it was
18 not properly mailed obviously to the State as well as
19 to the Judge.

20 **BY THE COURT:** Okay, well, maybe I can simplify
21 this. When this case, these cases were set back in,
22 I believe, November, they were set in a hearing in
23 Kosciusko for the 26th of January. Of course, you
24 Counsel took that knowing what that date was. Be
25 that as it may, all three cases were set for January
26 the 26th. Regardless of what that motion for a
27 continuance is in relation to, Mr. Freelon, then if
28 that gets continued, then we are going to try one of
29 the other two. So I don't know that it makes much

1 difference for us to pursue this any further.

2 I am going to grant the Motion to Withdraw in this
3 particular case only. And Mr. Gilmore, you are on
4 notice that if they are not ready to go to trial,
5 that you will be ready to go to trial on the 26th of
6 January.

7 BY MR. JOHN GILMORE: Yes, Your Honor. As far
8 as I know right now, they have only entered an
9 appearance and we are only requesting to withdraw in
10 this case.

11 BY THE COURT: I understand.

12 BY MR. JOHN GILMORE: If at some time in the
13 future that the Defendant does not wish us to
14 represent him on whichever case--

15 BY THE COURT: Well, we will just deal with that
16 when we get to it. As a matter of fact, I think we
17 have disposed of that motion. Let's move on to some
18 of the others. Okay?

19 BY MR. JOHN GILMORE: Thank you, Your Honor.

20 BY THE COURT: Okay. Now y'all want a
21 continuance and then you want to dismiss it because
22 he doesn't get a speedy trial? Which one of those
23 you want?

24 BY MR. LUMUMBA: Excuse me one second, Judge.

25 (Defense Counsel confer.)

26 BY MR. LUMUMBA: Judge, yes; well, as far as,
27 there are several motions here. One of them was a
28 Motion to Dismiss for failure of a speedy trial, and
29 just since the Court has referenced that motion, let

1 me just say this about it and then move on. And I
2 think there is one which may take precedence over
3 that one, but our thinking is this: That this court
4 date in my understanding is set for the 26th of
5 January. We don't ask any kind of consideration for
6 any continuance that we get because I think the rules
7 are perfectly clear that from any time delay that we
8 cause that that cannot be considered in relationship
9 to a violation of a speedy trial motion.

10 But if my arithmetic is right and if my counting
11 is right, and sometimes it's not, but if it is, then
12 from the date of the arraignment of any of these
13 cases to the 26th is already a violation of the 270
14 day rule. So long before Harvey Freelon and Chokwe
15 Lumumba were ever thought of this case was set at a
16 date which basically constituted a violation of the
17 rule. My understanding is that these cases were, he
18 was arraigned on these cases in, I think, March of
19 19-- this is '98 coming up, so we must be talking
20 about '97.

21 **BY THE COURT:** Y'all may want to amend your
22 motion. Have y'all read it?

23 **BY MR. LUMUMBA:** Pardon?

24 **BY THE COURT:** Have y'all read your motion?

25 **BY MR. FREELON:** Yes, sir. Amend it in which
26 way?

27 **BY THE COURT:** Well, Stephanie Norton is not a
28 defendant.

29 **BY MR. LUMUMBA:** Okay, all right.

1 **BY THE COURT:** Computer glitch.

2 BY MR. LUMUMBA: Yeah, that is probably--

3 **BY THE COURT:** The facts are, Mr. Lumumba, he
4 was, I think he was arraigned, probably you are
5 right, in March. It was before the April term of the
6 Montgomery County Court.

7 BY MR. LUMUMBA: Right. And as we count it,
8 January 26th means it is over 270 days beyond the
9 time. And there was a way that he could have been
10 tried for this case prior to the end of that period.
11 My understanding is that counsel predecessors made a
12 motion to reconsolidate the cases in order to try
13 them, and that motion was denied. And I understand
14 that the DA opposed that motion, if I'm not mistaken,
15 which meant that the DA, who had an obligation to
16 bring this case to trial before the 270 day rule was
17 up, was basically choosing not to do so when he
18 decided that he would not consolidate the cases and
19 take them to trial at the same time. But, if-- and
20 of course, as you know, I haven't read all this
21 transcript, so, you know, I am relying upon what I
22 have been told, and if those things are true, then I
23 think that there is a serious problem which has
24 nothing to do with a motion that we might have for
25 continuance.

26 But the second thing is this, Judge. We did
27 have another motion which I think--

28 **BY THE COURT:** --Well, let's just stick on one at
29 a time. I'm not quick enough to handle them both.

1 BY MR. LUMUMBA: Okay, all right.

2 BY THE COURT: Anything else on that motion?

3 BY MR. LUMUMBA: I don't have anything else on
4 that motion other than the fact also we think that
5 under the circumstances, particularly of separating
6 the counts, and this being a death penalty case, we
7 think all things considered this thing also violates
8 speedy trial rights as it relates to the Federal
9 Constitution, which I believe is the Barker v. Wingo
10 case, and due process rights. He should have been
11 tried on these cases at the same time. Drawing the
12 cases out adds to the inability of the Defendant to
13 bring forth competent defenses, compromises his
14 ability to have resources to defend his self from
15 case to case. It affects him in a number of
16 different ways and including - and this is one of the
17 things that we will, we would like to supplement at a
18 later date - could have even cost him some witnesses'
19 testimony, could have cost him, could have taken some
20 time which has caused witnesses to change their
21 testimony.

22 But in any event, that goes to the Barker v.
23 Wingo portion of the Motion because as the Court may
24 recall under the federal guidelines, you show not
25 only the time that it has taken, but the prejudice
26 which has accrued, and it's a requirement to show
27 some kind of prejudice. Prejudice has to do with the
28 loss of witnesses, has to do with the taxation of,
29 the continued taxation of, in this kind of defense,

1 of finances, resources, need to hire additional
2 attorneys.

3 But more importantly, going to the first part of
4 the Motion which has to do with just the State
5 requirements of the 270 days, there is no prejudice
6 needed to be shown, just that he violated the state
7 statute which says you have to be tried in 270 days,
8 and that has not happened in this case.

9 **BY THE COURT:** Okay. Go ahead.

10 BY MR. EVANS: Your Honor, I think the Court
11 well knows on this case the process of how we got
12 here. The State never at any point asked for a
13 continuance in this case. The State has been
14 prepared from the day of arraignment to try this
15 case. This case was necessarily continued by the
16 Defense filing a Motion for Change of Venue. The
17 court date was agreed by all parties in this case
18 that it be tried in Tupelo on that date that it was
19 tried.

20 As I believe this Court knows - apparently Mr.
21 Lumumba doesn't - I was the one that filed the Motion
22 to Consolidate all four of the cases. Defense would
23 not agree to that, and after further looking at the
24 law and determining my motion should not have been
25 filed, we did file a Motion to Withdraw it. But that
26 was not a State motion. The Defense has never at any
27 point demanded a speedy trial because the trial was
28 being carried out as fast and judiciously as it could
29 by agreement with the Defense on every step through

1 the way.

2 So there can be no problem as far as the 270
3 days, and for Defense Counsel to come in here and say
4 we want you to rule on this other part, but we don't
5 wish to put on any proof at this time, I don't see
6 why they are even raising it.

7 BY MR. JOHN GILMORE: Your Honor, may I speak to
8 that?

9 BY THE COURT: No, you are not in this case any
10 more.

11 BY MR. LUMUMBA: Well, I can call him as a
12 witness if you would like, Judge, or else we can just
13 let him speak. But from my understanding is that,
14 now your record should speak for itself. But my
15 understanding is two fold. A: Of course, it was
16 the, these cases never would have been separate in
17 the first place had not the District Attorney decided
18 to get them on separate indictments of separate
19 counts. I'm not sure exactly what he did, but I
20 think he got separate indictments. He could have
21 taken it before the grand jury, and I think gotten
22 the indictments, all counts in one indictment.

23 But secondly, from my understanding of what
24 happened here, there was a Motion to Consolidate.
25 The Defense did not oppose the motion.

26 BY THE COURT: Do you have any authority for me
27 being able to consolidate them? I can tell you right
28 now why it didn't get consolidated.

29 BY MR. LUMUMBA: Okay.

1 **BY THE COURT:** There is a case where, there was
2 two cases where two persons on the same crime were
3 jointly, they were indicted separately. Judge
4 Carlson consolidated that case. The Supreme Court
5 held there is no rule allowing such consolidation.
6 Reading that case, I would not allow the
7 consolidation because there is no such rule allowing
8 consolidation even if the Defendant wants it. Now if
9 you can find me some authority to that, I would be
10 glad to entertain that motion again. But the reason
11 I didn't do it was because the Supreme Court said I
12 could not do it.

13 **BY MR. LUMUMBA:** Okay, but this is what I
14 understand occurred. Let me just mention-- just
15 correct me if my facts are wrong.

16 **BY THE COURT:** Sure.

17 **BY MR. LUMUMBA:** A: I believe that after the
18 District Attorney proceeded to the Grand Jury and got
19 separate indictments which therefore created a
20 consolidation problem for you; had that not happened,
21 you would have had no consolidation problem to start
22 off with. If they would have gotten one indictment
23 with several counts, which happens in most cases when
24 you are talking about one act -- this is not a
25 misdemeanor. This is not a speeding ticket. I know
26 down in municipal court they frequently have several
27 different acts that they put you on several different
28 case numbers for. That generally doesn't happen in
29 felonies. So that was a choice they made to start

1 off with.

2 But secondly, what occurred is that they made a
3 Motion to Consolidate. Once they made the Motion to
4 Consolidate, the Defense took no position if I'm not
5 mistaken.

6 **BY THE COURT:** That's correct.

7 BY MR. LUMUMBA: Okay, he took no position at
8 all, so the Defense was no obstacle. And then I
9 understand - and I could be wrong - is that, I
10 thought the Court had consolidated the cases and
11 consolidated two of the cases; I'm sorry. The Court
12 actually consolidated two of the cases. The DA
13 changed his mind, decided he didn't want these cases
14 consolidated. He came back and made a motion to that
15 respect, and the Court unconsolidated the case. The
16 Defense at a later point moved to consolidate at
17 least two of the cases or all four of the cases; I'm
18 sorry; moved to consolidate all four of the cases,
19 and then that motion was denied.

20 So that's what I understand is the chain of
21 events, and, of course, the records will speak for
22 themselves, or I could put on Counsel who probably
23 has a fresher memory than us. But this is what we
24 have been told is that "A," the cases came separately
25 because the--

26 **BY THE COURT:** --You are correct. Your
27 statement is correct.

28 BY MR. LUMUMBA: Okay. So if that's the case,
29 then everything I said when I first stood up here is

1 true.

2 **BY THE COURT:** Right, and everything I told you
3 is true too. I found that the Supreme Court said I
4 couldn't do that, so I undid it.

5 **BY MR. LUMUMBA:** Yeah, but don't they have to be
6 held to the -- but the Supreme Court didn't say that
7 the 207 rule would not apply because they have chose
8 to--

9 **BY THE COURT:** --Okay, well, I can get to that
10 point. Let's talk about the consolidation if you
11 have got anything else further on that.

12 **BY MR. LUMUMBA:** I don't have anything further
13 on the consolidation, I don't believe. If I could,
14 one second. Let me see. I may have something.

15 (Defense Counsel confer.)

16 **BY MR. LUMUMBA:** It was at least our
17 understanding from a Defense perspective, Judge, is
18 that what your ruling was is not that the Supreme
19 Court said you couldn't do it, but it was up to you.
20 And now that-- well, let me say this because I would
21 like to have a chance to visit that case if that is
22 key to the Judge because as we talk, my recollection
23 is refreshed on past prior law. I think that is the
24 state of law. I don't think there is any Supreme
25 Court law that says you cannot do it. I think there
26 is a Supreme Court case that says that it's
27 discretionary. That's what I think but--

28 **BY THE COURT:** --They told Judge Carlson he
29 couldn't do it and reversed him because he did it.

1 It's not exactly in point, but it's enough to where
2 they said that if it's not a rule allowing it, you
3 can't do it. Now I think maybe if it got up, that
4 they very well might say that it doesn't apply in
5 this particular case. But I don't know that, and so
6 I know we can try them separately. The Simon case
7 clearly indicates they can try them separately. So
8 that's what I have ruled, and that is -- anything
9 further on the speedy trial?

10 BY MR. EVANS: Your Honor, it has nothing to do
11 with it, but I would like the record to be clear.
12 Opposing Counsel has stated that the Court entered an
13 order and then changed its ruling. That is not
14 correct as the Court knows. The parties, both sides
15 and the Judge agreed that two of the cases could be
16 consolidated. The Judge asked us to prepare an
17 order. Before the Court ever signed an order, we
18 researched it, found that the law did not authorize
19 consolidation. And at that point we moved to
20 withdraw our motion before an order had ever been
21 signed by the Judge in this case.

22 BY MR. LUMUMBA: Judge, let me just say this.

23 BY THE COURT: But the record is going to speak
24 for itself on that. I think that is true, that I
25 never actually entered a written order. I think
26 there was an agreement to that effect. Everybody had
27 agreed, and I had agreed to enter the order to do it,
28 but it never was entered because this case was
29 presented to me before it was done. I think that is

1 right. But if that is not right, the record has got,
2 will reflect that.

3 BY MR. LUMUMBA: Right. Judge, I don't want to,
4 you know, be too insistent on this point, but let me
5 just say this. Before you make a decision on this
6 issue, our motion to continue the hearing and the
7 motion date, I think, takes precedent over this
8 discussion. And the reason why, you know, I feel
9 compelled to bring it up at this time is because
10 given enough time, we could certainly, first of all,
11 they can respond to our motion, and they can say
12 these things that they are trying to say now.

13 But secondly, we can be better informed as to
14 particularly what took place, although the Court does
15 acknowledge that at least the sequence that I stated
16 it in was what happened. But I think that that is
17 important for all the motions, not just this one. I
18 don't want to just center in on this one. I think
19 that we need to continue the motion dates in these
20 motions and to have the motions at another time.
21 There is another motion which had been filed which
22 really takes precedence--

23 BY MR. EVANS: --Your Honor, may we stick with
24 one motion at a time?

25 BY THE COURT: Yes, sir. I am just going to
26 hear one of these at a time, and then we will hear
27 the others.

28 BY MR. LUMUMBA: Okay, I understand. Well, can
29 we raise them? There is at least two or three which

1 I think I can give you an argument why they should be
2 heard before the other ones, and then you can make a
3 decision which one we are going to--

4 **BY THE COURT:** --Well, tell me which ones they
5 are.

6 **BY MR. LUMUMBA:** Well, first of all, we filed a
7 Motion for Recusal. Now obviously, that seems to
8 take precedence.

9 **BY THE COURT:** Okay. I will hear that.

10 **BY MR. LUMUMBA:** Okay. Okay, what we are
11 dealing with here is, as they have said in one case,
12 even the appearance of impropriety should be avoided
13 when we talk about judicial recusal. And that is the
14 case of Collins v. Dixie Transport, 543 So.2d--

15 **BY THE COURT:** --Okay, I have read your motion,
16 and of course, I am familiar with those cases.

17 **BY MR. LUMUMBA:** Right.

18 **BY THE COURT:** Tell me what is impropriety you
19 are talking about that I have done or will do in this
20 case.

21 **BY MR. LUMUMBA:** Well, I think that the Court
22 has sentenced my client to death.

23 **BY THE COURT:** No, I didn't.

24 **BY MR. LUMUMBA:** You--

25 **BY THE COURT:** --The jury did it.

26 **BY MR. LUMUMBA:** Well.

27 **BY THE COURT:** Well, that is the law. The jury
28 did it.

29 **BY MR. LUMUMBA:** I know the jury reaches a

1 decision, but I think the Court still-- you don't sit
2 there and announce what the--

3 **BY THE COURT:** --I enter an order that is
4 mandatory on my part. The law requires me; I have no
5 alternative but to enter that order.

6 BY MR. LUMUMBA: Right. The Court has heard
7 basically similar motions to the motions which we
8 will assume will be argued in this case. The Court
9 has had to make rulings on evidence which will be
10 similar-- we are not talking about cases which are
11 similar; we are actually talking about cases which
12 are identical. These are the same causes. All four
13 of these cases are exactly the same cases, and so for
14 the Court to have already more or less determined
15 what its rulings are on these cases, and I'm not
16 saying -- that was your obligation. I'm not
17 suggesting to you that you could have done something
18 else. This is not a motion to recusal, and I think
19 that we should understand that the breadth of the
20 motion to recusal does not just deal with judges
21 having biases which they shouldn't have. It deals
22 with judges having biases regardless of whether they
23 should or should not have them.

24 In other words, this is not just a motion which
25 is geared toward somebody with racial bias or a bias
26 because they know somebody or did business with them
27 or have a relationship to them. It is a bias period,
28 however it is derived, and in many jurisdictions in
29 many states it is automatic that if you try--

1 **BY THE COURT:** --What bias, Mr. Lumumba? I
2 don't understand what you are talking about.

3 BY MR. LUMUMBA: You have made decisions in this
4 case.

5 **BY THE COURT:** Well, that is not a bias.

6 BY MR. LUMUMBA: It is a bias for the second
7 case because in the second case unless you are really
8 just trying one case here under four different titles
9 so you can give out four different death penalties.
10 What I'm saying here is that if this is as we contend
11 it is and actually a separate case, then we are
12 entitled to a separate decision on every motion. We
13 cannot have the Judge who has already made up his
14 mind on the motion come in and start deciding the
15 same motions against us or for us, whatever the case
16 may be. And so the question that I'm suggesting to
17 you is that by the very nature of this being the
18 identical facts that we are trying here, you have to
19 be bias. You have to have made a decision. I think
20 it is an elementary psychological principle that once
21 one commits himself on a particular issue, that one
22 tends to cling to that particular decision.

23 And so what I'm saying is that the bias is
24 there. I think it is inherent in the very nature of
25 what is occurring here. I think that the problem
26 here is, that we keep bumping into in this case and,
27 you know, people may think that these are phantom
28 issues I am throwing at them here, but I believe to
29 the extent of the time we have had, we have given

1 them some consideration. And there has been a lot of
2 issues that people thought were phantom issues that
3 have reverberated to send these cases back to trial
4 courts on many courts especially when we are talking
5 about death penalty cases. This is a very serious
6 matter.

7 How many judges can you say in this state have
8 actually sat around and heard the identical case two
9 or three times, given the opportunity to sentence a
10 man to death four or five times in the same identical
11 fact situation, and the case has not been reversed?
12 You know, and they have moved for a recusal at any
13 point in time.

14 **BY THE COURT:** I don't know of any. Do you?

15 BY MR. LUMUMBA: Well, no, I doubt seriously
16 that it has happened, and in fact, what I was about
17 to share with the Court in many jurisdictions which
18 are under the same United States Constitution that we
19 are under, they automatically recuse the judge from
20 trying a case which, where the issues which are to be
21 discussed and the decisions which are to be made are
22 so closely associated.

23 And then they have in many jurisdictions an
24 automatic challenge. Any time the defendant stands
25 up and moves to recuse a judge in that kind of
26 situation, it's automatically granted. It's kind of
27 like a situation where the defendant has actually a
28 judicial peremptory where -- now we don't have those
29 systems here in this jurisdiction, but what I'm

1 trying to tell the Court is that the reasons for
2 those, reasons for those innovations in this various
3 jurisdiction have to do with the kind of concerns
4 that we have right here. So that's why we make the
5 motion, Judge.

6 BY MR. EVANS: Very briefly, Your Honor, because
7 I don't think this Motion calls for much argument.
8 These are separate cases, but I'm afraid that in the
9 State of Mississippi we are stuck with trying cases
10 under the same law in every case that we try. The
11 only thing that I can see in this Motion is that the
12 Defense Counsel does not agree with the Court's
13 interpretation of the law. That is the law in this
14 state.

15 These cases and these motions, also most of the
16 motions that have been filed in this particular case
17 were filed in all four cases to start with. This was
18 before the Court ever asked us to elect which case we
19 would try first. We have already, this Court has
20 already ruled on practically every motion that could
21 be ruled on in all four cases including the one that
22 we are here on today. Now for them to come up now
23 and say the Court is biased just because they don't
24 like the rulings that had been entered in these
25 opinions, I think is very improper.

26 BY THE COURT: Well, I can-- let's move on. If
27 I am wrong on the rulings I have made, the Supreme
28 Court is going to tell me so, and if the Defense has
29 any arguments in this case on those motions that I

1 have ruled on that is different from the argument
2 that was made by the Gilmores, then I will listen to
3 that and rule on it in that way. Other than that, if
4 it's the same argument, I will make the same ruling.
5 I overrule the Motion to Recuse myself.

6 BY MR. LUMUMBA: Okay, Judge, so are you telling
7 us now that we are stuck to whatever arguments the
8 Gilmores made? I mean doesn't that sound like--

9 BY THE COURT: --If I have already ruled on the
10 motion, yes, sir; you are.

11 BY MR. LUMUMBA: Okay, well, then how are we
12 being allowed to try this case new? What is new
13 about this case--

14 BY THE COURT: --Well, if it is nothing new--

15 BY MR. LUMUMBA: --other than the fact you can
16 give him another death penalty?

17 BY THE COURT: If there is nothing -- I am not
18 giving him any death penalty, Mr. Lumumba. The jury
19 does that.

20 BY MR. LUMUMBA: Whoever. The point that I'm
21 making--

22 BY THE COURT: --Okay, I am just trying-- I am
23 just going to be the one going to try this case,
24 okay. Now if you, if you will listen to what I
25 said--

26 BY MR. LUMUMBA: I heard it.

27 BY THE COURT: Okay, well, did you hear me say
28 that if you have arguments other than what the
29 Gilmores have made, then I will listen to those and

1 listen to what you have to say about them?

2 BY MR. LUMUMBA: But that is the problem; see,
3 because we are in a new case where we have new
4 motions. It doesn't make any difference what the
5 Gilmores -- we are entitled to a fresh interpretation
6 and a fresh outlook on everything.

7 BY THE COURT: Sure; if you have got fresh
8 things to present to the Court, but I'm not going
9 back and redo those same motions that I have ruled on
10 just to do them over again. If you have got
11 something new to present, I will entertain them and
12 we will go back to them. But if you don't, those
13 rulings stand.

14 BY MR. EVANS: Your Honor, if I may, this is not
15 a new case.

16 BY MR. LUMUMBA: Right.

17 BY MR. EVANS: Just because they are in this
18 case now does not make it a new case.

19 BY THE COURT: I understand that, and I have
20 ruled. Let's move on to the next motion.

21 BY MR. LUMUMBA: It's a new case because it's on
22 a different indictment.

23 BY THE COURT: No, it is a not a new case.

24 BY MR. LUMUMBA: Is it a different indictment,
25 Judge?

26 BY THE COURT: Yes, sir. It is a different
27 indictment. There are four--

28 BY MR. LUMUMBA: --How can it be anything but
29 new?

1 **BY THE COURT:** These cases, he was arraigned on
2 these cases in March. They have been pending since
3 March, so there is no new case. There just happens
4 to be new counsel. That doesn't change the status of
5 the case up to this point in relation to what has
6 been done in it already unless you have new things to
7 offer the Court. If you do, I am telling you I will
8 listen to them. If you don't, we are going to move
9 on to things-- we are not going to spend a lot of
10 time on things that we have already done and rehash
11 them. I'm not going to do that. I have ruled on
12 this Motion. I have overruled it; I mean I do not
13 sustain the Motion for me to recuse myself in this
14 matter. What is next?

15 **BY MR. LUMUMBA:** Well, on that Motion and
16 perhaps on some others, we would offer the Court an
17 opportunity to sign an order certifying this for
18 interlocutory appeal. I think it is a critical
19 question. I mean I think that we have clearly-- your
20 opinion is exactly 180 percent opposite of what we
21 think it ought to be, and I think that this is the
22 kind of motion that the Supreme Court -- and we both
23 acknowledge that probably there hasn't been any prior
24 experiences in Mississippi like this. So that being
25 the case, this is the exact same kind of case that we
26 need to take up to the Supreme Court to see what they
27 believe.

28 **BY THE COURT:** All right, that Motion is
29 overruled. Let's move on to the other motions we

1 have got today.

2 BY MR. EVANS: Your Honor, again, I may be
3 wasting the Court's time, but just for the record, I
4 would like to point out in this particular district
5 there have been numerous capital murder cases where
6 the same judge has heard several different cases.

7 BY THE COURT: I know of one for sure.

8 BY MR. LUMUMBA: On the same facts?

9 BY MR. EVANS: On the same facts.

10 BY THE COURT: On the same facts, four different
11 trials.

12 BY MR. LUMUMBA: And counsel raised the issue
13 about recusal?

14 BY THE COURT: Oh, I don't know whether they did
15 or not. I was defense counsel for a while on one of
16 them.

17 BY MR. EVANS: Yes, sir; there was a motion to
18 recuse.

19 BY THE COURT: Was that motion raised? I
20 swapped jobs and had to get out.

21 (Defense Counsel confer.)

22 BY MR. LUMUMBA: The second thing that we want
23 to bring to the Court's attention is the Motion to
24 Continue the Motion Date. The amount of material
25 which is present in this case, the amount of
26 witnesses that have to be talked to, it requires a
27 much extended, much more of an extended period of
28 preparation than we have been given.

29 BY THE COURT: Let's get to that one last.

1 Let's do that one at the end. I'm going to listen to
2 you on that, but I would rather do that after we hear
3 all these others. We are going to hear the motions
4 that are filed today.

5 BY MR. LUMUMBA: Okay.

6 **BY THE COURT:** I will entertain, I will talk, we
7 will talk some about any further motions that you
8 might have later on in this hearing, but I want to
9 move on to these substantive motions that y'all have
10 filed.

11 BY MR. LUMUMBA: Well, then what we should
12 understand then is that every motion that we have
13 filed should be put in a status of incomplete. We
14 don't believe that we have completely made a
15 presentation that has to be made in each motion
16 because of the circumstances that I would argue in
17 the motion for a continuance of the time. There has
18 not been sufficient time. So understanding that, I
19 don't mind making the arguments on motions
20 understanding that that is our position in this
21 case.

22 BY MR. EVANS: Your Honor, we are wasting the
23 Court's time if--

24 BY MR. LUMUMBA: --Judge--

25 **BY THE COURT:** --Wait; wait; wait; one at a
26 time.

27 BY MR. EVANS: If I may address the Court just a
28 second in response--

29 BY MR. LUMUMBA: --Hold it; hold it.

1 **BY THE COURT:** He is not through though.

2 BY MR. LUMUMBA: When I get finished, then you
3 can talk.

4 BY MR. EVANS: But he hasn't even gotten to his
5 motion yet. This is just in response to a
6 statement--

7 BY MR. LUMUMBA: --It doesn't make any
8 difference what it is, he only gets the floor when I
9 get finished with the floor.

10 **BY THE COURT:** Okay, we have got--

11 BY MR. LUMUMBA: --Those are the rules.

12 **BY THE COURT:** None of you get the floor until I
13 say you get the floor.

14 BY MR. LUMUMBA: Well, I had it.

15 **BY THE COURT:** You have got it, all right.

16 BY MR. LUMUMBA: Okay. Can we have about a five
17 or ten minute recess?

18 **BY THE COURT:** Yes, that will be fine.

19 (FOLLOWING A RECESS, MOTION PROCEEDINGS
20 CONTINUED ON 1/5/98 IN OPEN COURT WITH THE SAME
21 PERSONS PRESENT AS PREVIOUSLY NOTED:)

22 BY MR. LUMUMBA: I think that we are, my client
23 has something he would like to let be known to the
24 Court, and this has to do with the remaining cases
25 which are awaiting trial. And I think it's important
26 for him to articulate this at this time. Mr. Curtis
27 Flowers.

28 BY THE DEFENDANT, MR. FLOWERS: Your Honor, I
29 would like to terminate Mr. Gilmore and them from all

1 of my remaining cases that are awaiting trial.

2 **BY THE COURT:** Who is going to represent you
3 then?

4 **BY THE DEFENDANT, MR. FLOWERS:** Mr. Freelon and
5 Mr. Lumumba.

6 **BY THE COURT:** Okay, when they enter their
7 appearance in those two causes, then we will talk
8 about it.

9 **BY MR. LUMUMBA:** Okay, I think it's-- so we
10 wanted to bring to the Court's attention of his
11 intention to do that. The second thing is I want to
12 bring this to the Court's attention. On our motion
13 for-- the motion that the Court just indicated it
14 wanted to decide this Motion to Continue the hearing
15 date, the motion date later on; is that correct?

16 **BY THE COURT:** Later today.

17 **BY MR. LUMUMBA:** Later today, okay, all right.
18 The Court has denied the Motion for Recusal. We are
19 at this point arguing the Motion to Dismiss for
20 Violation of the Speedy Trial Rule both under state
21 law and under the Constitution of the United States.

22 **BY THE COURT:** Okay, I believe you have already
23 argued that, haven't you?

24 **BY MR. LUMUMBA:** Did you deny that?

25 **BY THE COURT:** I have not yet, but you moved on
26 before I could rule.

27 **BY MR. LUMUMBA:** Okay, that is the motion that
28 we put before the Court at this time.

29 **BY THE COURT:** Okay, the Court finds that the

1 Defendant was arraigned in March at which time he was
2 represented by John and Billy Gilmore as retained
3 counsel. The Defendant requested to have sufficient
4 time to prepare this case for trial. The Court found
5 that sufficient time at that time was 60 days; set
6 motion deadlines and all deadlines where the case
7 would be ready for trial by the first of July. I
8 might be off a day or two on that, but it was around
9 the first of July, within 60 days of arraignment.
10 That was agreed to by both parties.

11 There was a deadline, I believe, after 30 days
12 for a Motion for Change of Venue to be filed. That
13 was filed within that time. The State did not
14 contest the Motion for Change of Venue. The Court
15 entered an order changing the venue to Lee County and
16 set this case for the 13th of October of 1997. That
17 date was satisfactory to both parties. All four
18 cases were set at that time, so the October 13th date
19 was set by agreement of the parties.

20 After presentation to the Court-- after the
21 Court presented the parties with that date, all
22 parties agreed to all four cases being set on October
23 the 13th. Obviously, the Court couldn't try but one
24 at a time at that time, and that first one was
25 tried. After that, the Court had a term of court in
26 October beginning right after that in Winston County
27 which took all the month of December or the first
28 week-- I mean all the month of November. And the
29 first week of December was, the Court had a full

1 schedule, and by that time opposing counsel-- I mean
2 new counsel had been retained, and they certainly
3 were not ready to go to trial in December. Nobody
4 has objected to the setting of January 26th date up
5 until this point today.

6 The Court finds that the 270 day rule has not
7 been violated and that that Motion to Dismiss because
8 of a lack of a speedy trial is not well taken and
9 should be overruled. Okay.

10 BY MR. LUMUMBA: So just so I am understanding
11 the Court correctly, the Court's position is, is that
12 it's pretty much just disregarding our presentation
13 as it relates to -- does the Court acknowledge that
14 these Counsel prior to us moved to consolidate these
15 cases prior to the last trial?

16 BY THE COURT: I thought I had already ruled on
17 that. I made a ruling that I could not consolidate.
18 I never consolidated them. The motion was filed. It
19 was agreed to verbally between all parties. Before
20 an order was entered, the State withdrew its Motion
21 to Consolidate. So that Motion was not sustained.
22 The Defendant then filed a Motion to Consolidate all
23 four counts into one count. I believe that is
24 right. Was that right, Mr. Gilmore?

25 BY MR. JOHN GILMORE: Yes, sir.

26 BY THE COURT: All four counts. Counsel at that
27 time could not furnish the Court with any authority
28 to do that, and the only authority that the Court
29 found concerning consolidation, while it was not

1 directly in point, stated that-- that case states,
2 the Supreme Court states that consolidation can't be
3 done without a rule. So since it was a discretionary
4 act on my part to begin with, if I couldn't-- if the
5 rules allowed it, it would be discretionary. So I
6 exercised my discretion and did not consolidate.

7 BY MR. LUMUMBA: Okay, and the Court also
8 acknowledges, of course, that the DA exercised his
9 discretion in failing to put these in the same
10 indictment to start off with.

11 BY THE COURT: Yes, sir, but I understand from
12 the Simon case and other cases clearly indicate that
13 you can properly do that.

14 BY MR. LUMUMBA: But the Simon case does not
15 address the question of whether they will excuse the
16 speedy trial violation when you choose to do that.

17 BY THE COURT: Somebody must have raised it
18 somewhere because they tried all four of them. They
19 tried them on all four counts.

20 BY MR. LUMUMBA: Differently, but I don't think
21 that issue was ever raised. So I just--

22 BY THE COURT: --Okay, well, we will see what
23 they will do with it, Mr. Lumumba.

24 BY MR. LUMUMBA: Okay. Is the Court assuming a
25 conviction in this case already?

26 BY THE COURT: No, sir, but you have been
27 talking about me giving the death penalty, so I am
28 just kind of going along with you.

29 BY MR. LUMUMBA: All right, well, I suppose if

1 the Court had some other state of mind, it would
2 correct me, not just go along with what I'm saying.

3 BY MR. EVANS: Your Honor, may we get back to
4 the motion, not this junk?

5 BY THE COURT: Yes, sir.

6 BY MR. LUMUMBA: Get back to what?

7 BY MR. EVANS: The motions--

8 BY THE COURT: Well, let's get back to the
9 motions, Mr. Lumumba.

10 BY MR. EVANS: --what we are supposed to be here
11 for today.

12 BY THE COURT: I haven't prejudged this case one
13 way or another, and I remind you once again, I don't
14 decide this case. A jury does.

15 BY MR. LUMUMBA: Right. We have a Motion to
16 Suppress Witness Statements which will require that
17 the witnesses who testified against our client at
18 trial, the jailhouse snitches, that they be produced
19 to appear on the stand for evidentiary hearing.

20 BY THE COURT: All right, which one is that?
21 What is the title of it?

22 BY MR. LUMUMBA: The Motion to Suppress Witness
23 Statements.

24 BY THE COURT: Okay, all right.

25 BY MR. EVANS: Your Honor, that Motion is not
26 properly filed. For a motion to suppress, the
27 defense has to put on proof of why this evidence is
28 not material, and again, as this Court knows,
29 apparently Defense Counsel does not know, these

1 witnesses were questioned on these specific areas on
2 the stand when they testified, and they clearly
3 covered all of these issues.

4 BY MR. LUMUMBA: We are entitled to a hearing
5 out of the presence of a jury on a motion to suppress
6 any time we raise one. We don't have to have a
7 showing to have a hearing other than to allege that
8 there was a violation of the Defendant's
9 constitutional rights, and that violation had to do
10 with the taking of a statement from him by people
11 connected with the State without the authority to do
12 so. We don't have to have a hearing before the
13 hearing. We are absolutely entitled to an
14 evidentiary hearing on this issue.

15 BY THE COURT: Do you have any witnesses you
16 want to put on?

17 BY MR. LUMUMBA: We have those two witnesses
18 that we want to put on.

19 BY THE COURT: Did you subpoena them for
20 today?

21 BY MR. LUMUMBA: No. And we didn't have to.
22 You hadn't granted the motion to have a suppression
23 hearing.

24 BY THE COURT: Oh, I did. I set all the motions
25 for today, Mr. Lumumba.

26 BY MR. LUMUMBA: No, you did not grant the
27 motion to have the hearing, and you did not set a
28 hearing date for the evidentiary hearing. We have
29 made a motion to either dismiss these statements

1 and/or to have an evidentiary hearing. You have not
2 granted either part of the motion. We are entitled
3 to the granting of the motion for the evidentiary
4 hearing which you haven't granted. Some courts put,
5 you know-- once they grant these motions, then they
6 schedule times for them.

7 **BY THE COURT:** This Court scheduled time for
8 them. It is called today.

9 BY MR. LUMUMBA: No, this is not the day that
10 you scheduled for a hearing.

11 **BY THE COURT:** Mr. Lumumba, I know what I
12 schedule. Now your interpretation--

13 BY MR. LUMUMBA: --Have you ordered--

14 **BY THE COURT:** --your interpretation may be
15 different.

16 BY MR. LUMUMBA: Have you ordered an evidentiary
17 hearing in this case?

18 **BY THE COURT:** Yeah, I ordered it for today.

19 BY MR. LUMUMBA: An evidentiary hearing?

20 **BY THE COURT:** Uh-hum. I set all these motions
21 to be heard today.

22 BY MR. LUMUMBA: No, no, no. This is not a
23 hearing of the motions--

24 **BY THE COURT:** --You want a motion for a
25 motion?

26 BY MR. LUMUMBA: No.

27 **BY THE COURT:** You have got a motion to have a
28 motion to suppress; is that what it is?

29 BY MR. LUMUMBA: No, Your Honor. I have a

1 motion for an evidentiary hearing. Do you understand
2 what an evidentiary hearing is?

3 **BY THE COURT:** Yes, sir; I think so.

4 **BY MR. LUMUMBA:** That's where you take people's
5 statements.

6 **BY THE COURT:** Yes, sir.

7 **BY MR. LUMUMBA:** And if you understand that--

8 **BY THE COURT:** --Usually it takes witnesses.

9 **BY MR. LUMUMBA:** Is what you understand is that
10 what you have to do is order the evidentiary hearing
11 because see, if we were to bring the witnesses here,
12 then you would refuse to allow them to testify, then
13 we would have frivolously brought them; right? Okay?

14 **BY THE COURT:** No, sir. That is not correct.

15 **BY MR. LUMUMBA:** Well, my understanding is what
16 we are looking for is a hearing from these witnesses,
17 and we need adequate time to prepare which goes back
18 to the motion that I had already made to continue the
19 hearing and a motion date to interview witnesses and
20 to put them on the stand, and we want these witnesses
21 to testify. We are not waiving our right to have
22 them testify under any circumstances. And if it is
23 your-- and what we would expect the Court to do in a
24 rational ruling is to set an evidentiary hearing. If
25 the Court can't see fit to do that, then what we
26 would have to do is ask that the Court use its
27 offices to have these witnesses who are in jail, or I
28 don't know where they are. They may not be in jail
29 at this time.

1 (To Mr. Freelon) Are they in jail at this time?
2 They are not in jail at this time. Okay, is to give
3 an opportunity for us to subpoena the witnesses. We
4 have not had time to find the witnesses.

5 **BY THE COURT:** Have you looked?

6 BY MR. LUMUMBA: Yes. Actually we have.

7 **BY THE COURT:** What did you do?

8 BY MR. LUMUMBA: We have discussed it with
9 Counsel. Counsel has given us some leads as to where
10 he thought they might be.

11 **BY THE COURT:** Did you talk with the law
12 enforcement officers in Leflore County?

13 BY MR. LUMUMBA: No, we didn't; we didn't talk
14 to law enforcement officers in Leflore County. No,
15 we didn't.

16 **BY THE COURT:** How about probation officers or
17 anybody like that?

18 BY MR. LUMUMBA: We had no reason to know that
19 we should talk to probation officers.

20 **BY THE COURT:** Well, they were both convicted,
21 weren't they?

22 BY MR. LUMUMBA: We did not know that they were
23 under any probationary status. The fact of the
24 business, we don't know, we don't know for sure that
25 they were convicted. No, we don't know that. We
26 don't know that. In fact, we know they got a deal
27 because they got out of jail once they testified.
28 What the deal was we are not quite sure.

29 BY MR. EVANS: That is a complete misstatement

1 of the facts in this case, Your Honor.

2 BY MR. LUMUMBA: Well, if we had a hearing--

3 BY THE COURT: --Well, I know what they are.

4 There is no jury here.

5 BY MR. LUMUMBA: If we had a hearing, we could
6 find out what the facts are. Judge, what is it that
7 you are trying to accomplish here? Are you trying to
8 show the people in the audience here that you are
9 going to force this case to trial on the 26th no
10 matter what, even though it has been an inadequate
11 period of time? If that's what we want to put on
12 this record, then let it be said so we can stop
13 screwing around here.

14 The reality is, is that you have a multitude of
15 motions here. You have a whole box full of
16 information which needs to be inquired into. You
17 have got new counsel in the case, and even if we were
18 co-counsel with the other two gentlemen who are in
19 the case, we would be required to have sufficient
20 time to get ready for this case. We cannot try a
21 case based upon the knowledge that is in their head.
22 This gentleman here has hired us to try his case,
23 and should the Court not know it, and I don't mind
24 telling you, is that the Court when it looks at these
25 cases on appeal does not just merely look into
26 whether the cumulative number of lawyers in the case
27 had sufficient time to prepare, but whether the
28 lawyer that was essentially in charge of the case had
29 sufficient time to prepare. And that has not

1 occurred at this time.

2 So yes, this is our motion. We are alleging
3 that these witnesses were tainted by the, by the
4 relationship with the county and with the officers in
5 charge of this case, and that they were basically
6 plants set there to solicit information from our
7 client. And we are seeking a hearing on this issue.

8 **BY THE COURT:** Do you have any facts to support
9 that?

10 **BY MR. LUMUMBA:** Yes, we have facts to support
11 it. We know that they were in jail with our client.
12 We know that they took statements. They took
13 statements directly to the law enforcement officers.
14 We know that, in fact, that they were released from
15 jail earlier than they would have been.

16 **BY MR. EVANS:** No, they were not, Your Honor.
17 That is another misstatement of the facts--

18 **BY MR. LUMUMBA:** --Excuse me--

19 **BY MR. EVANS:** --in this case--

20 **BY MR. LUMUMBA:** --when I get finished--

21 **BY MR. EVANS:** --and I wish if he was going to
22 make statements, he would at least tell the truth.

23 **BY MR. LUMUMBA:** --When I get finished-- how do
24 you-- do you run the court by letting one person talk
25 at a time?

26 **BY THE COURT:** I think I am going to run it all
27 right, Mr. Lumumba--

28 **BY MR. LUMUMBA:** --okay, well, excuse me--

29 **BY THE COURT:** --without your help or Mr.

1 Evans'.

2 BY MR. LUMUMBA: Excuse me, but what is not
3 going to happen is that people aren't going to keep
4 jumping up and interrupting me. That is what is not
5 going to happen. I will tell you that.

6 BY THE COURT: You are not going to interrupt me
7 either.

8 BY MR. LUMUMBA: Okay, well, I'm not
9 interrupting you. If I recall correctly, I was
10 talking, and your man over here jumped up on me. Now
11 I think he needs to be, he needs to be set--

12 BY THE COURT: Mr. Lumumba, he is the District
13 Attorney. He is not my man.

14 BY MR. LUMUMBA: Okay, all right. Well,
15 whatever he is, he doesn't jump up and interrupt me
16 when I'm talking. That is what doesn't happen. And
17 so the point is--

18 BY MR. EVANS: --If Mr. Lumumba would show a
19 little respect--

20 BY MR. LUMUMBA: --excuse me--

21 BY MR. EVANS: --for the Court and the District
22 Attorney, we may not have that, but if we don't, it
23 is going to get out of hand.

24 BY MR. LUMUMBA: The thing is, is that if you
25 are showing respect, then you don't jump up and
26 interrupt people. I haven't jumped up and
27 interrupted him. If that's what we do here, then I
28 will understand it, and I will continue to do it when
29 he speaks. But if that is not what we do, then he

1 needs to sit down and be quiet until I am finished
2 talking. I just need to know the rules, whatever
3 they are.

4 **BY THE COURT:** You know the rules. Just follow
5 them.

6 **BY MR. LUMUMBA:** Okay. Am I, is that goes to
7 all of us? All of us have to follow the rules?

8 **BY THE COURT:** Sure.

9 **BY MR. LUMUMBA:** Okay, all right. So that is my
10 motion. We want a motion for a hearing, and we would
11 like to have a date to call these witnesses.

12 **BY THE COURT:** Okay. I am going to set that one
13 aside. Go to your next one.

14 **BY MR. LUMUMBA:** We have a Notice of Defendant's
15 Withdrawal of Motion to Change Venue from Montgomery
16 County, to change venue from Montgomery County which
17 venue was changed to Lee County.

18 **BY THE COURT:** The motion has already been
19 granted and an order entered.

20 **BY MR. LUMUMBA:** Well, given the stature of this
21 case and the way the cases were developed, it seems
22 to me that what happened in this case is that you
23 tried one case up here. I don't think that that
24 compels us to try the second case up here, nor at the
25 time that the motions were granted, I am unclear as
26 to what the state of the record was as to whether the
27 people knew that these cases were going to be tried
28 separately and whether we knew that all of them were
29 going to be transferred to Montgomery County.

1 **BY THE COURT:** Well, you probably didn't know,
2 but everybody involved in this case knew that they
3 were all changed up here. Your client was present,
4 and there was an order entered in each case changing
5 venue up here. So there is no such thing as a notice
6 to withdraw a motion that has already been sustained.

7 **BY MR. LUMUMBA:** Well, there is such thing
8 because we filed one.

9 **BY THE COURT:** All right. Well, it is
10 overruled.

11 **BY MR. LUMUMBA:** Okay. We would then make a
12 motion to change venue from Montgomery County-- Lee
13 County back to Montgomery County. At this particular
14 point in time, there is a number of reasons to do
15 so. Number one is that we have a situation here
16 where the case has been recently tried, and an amount
17 of prejudicial publicity exists in Lee County with
18 respect to this case. The case has been recently
19 tried. The case was frequently on the TV. It
20 resulted in a conviction. Jurors and any citizen in
21 this jurisdiction had access to that information and
22 have absorbed that information. You also had
23 newspaper articles in addition to the electronic
24 media which covered this case.

25 In addition, Judge, I think if I'm not mistaken,
26 this case was tried in front of an all white jury,
27 and Montgomery County provides an opportunity for
28 anybody who is concerned about getting racial
29 objectivity in the case to have a larger pool of

1 blacks. Blacks in Montgomery County is about 46
2 percent, I am told, and this is what the 1990 census
3 bears out and recent research in addition to the 1990
4 census as well as, whereas Lee County's percentage of
5 blacks in the county is only 20 percent.

6 So we would move to have the case returned to
7 Montgomery County. There can be no way where any,
8 where this could interfere with the administration of
9 the system of justice. The case has not been tried.
10 There has been no jury finally selected in this case,
11 and only in the last case was a jury actually
12 selected.

13 **BY THE COURT:** Have you got any authority for
14 where you get to select the venue?

15 BY MR. LUMUMBA: Do I have any authority where I
16 get to select the venue? I get to speak on the
17 venue.

18 **BY THE COURT:** No, you--

19 BY MR. LUMUMBA: --I don't get to change the
20 venue. I don't get to do anything.

21 **BY THE COURT:** Right. But you are asking me to
22 send it back to Montgomery County, so effectively you
23 are asking me to change it to a venue of your--

24 BY MR. LUMUMBA: --I have plenty of authority
25 which requires due process and fair and impartial
26 arbitration of the case.

27 **BY THE COURT:** I understand that.

28 BY MR. LUMUMBA: And so these are the things
29 that we put for you, before you to give you an

1 opportunity to do that. That is basically what all
2 motions are geared to do including the motion to
3 change of venue. We don't have the authority to
4 change the venue without your consent to it, and we
5 don't have the authority to put it in any given
6 place. But what this particular Motion is is to
7 return the venue back to where it originated, and
8 that was in Montgomery County. That is what this
9 Motion is and for reasons I have already stated.

10 **BY THE COURT:** Okay, anything else?

11 BY MR. LUMUMBA: Not on this Motion.

12 BY MR. HORAN: Your Honor, I would just like to
13 draw the Court's attention to Simon v. State.
14 Basically the same thing occurred in that case. The
15 case was transferred from Quitman County to Desoto
16 County. Counsel for the defendant didn't like the
17 venue. The Supreme Court ruled that once a venue has
18 been changed, that counsel for the Defendant, they
19 have waived any objection to where the venue is
20 unless they can show that a fair and impartial jury
21 cannot be selected from that particular venue.

22 There has been no attached affidavits nor any
23 allegation in the motion other than potential racial
24 bias, which this Court is aware of the fact that the
25 material witnesses against the Defendant were for the
26 most part black. Even though there was an all white
27 jury, there was every opportunity for this Defendant
28 to be tried by a fair and impartial jury of his peers
29 regardless of the race of the people on the jury.

1 The Supreme Court has held numerous times that
2 that is not the overwhelming factor that they are
3 going to consider. They look at the case as a whole
4 and determine whether or not the Defendant has
5 received a fair trial. Likewise, there has been
6 nothing stated into the record that the Defendant
7 could get a fair trial in Montgomery County. But
8 nonetheless, Simon v. State speaks on the issue
9 directly on point, and the State [sic] ought to deny
10 the Motion.

11 (Mr. Horan confers with Mr. Evans briefly.)

12 BY MR. LUMUMBA: I don't think Simon v. State
13 is--

14 BY MR. HORAN: --Your Honor, we have already, I
15 think we have already argued this Motion also
16 previously in Attala County. Then they wanted to get
17 a change of venue, and they argued initially that
18 they could not get a fair and impartial trial in
19 Montgomery County on their initial change of venue,
20 and there is nothing in the record today that they
21 could get a fair and impartial jury in Montgomery
22 County.

23 BY MR. LUMUMBA: There was never any decision
24 made that the fair and impartial jury could not be
25 had in Montgomery County. My understanding, it was
26 by agreement that the venue was changed. I
27 understand that the DA didn't oppose the motion. The
28 Court made no finding that there could not be a fair
29 and impartial jury in Montgomery County. If the

1 Court did, I would like to see the order. But the
2 Court didn't make a finding. The Court, because of
3 agreement, changed the venue, so there is no finding
4 that a fair and impartial jury could not be found in
5 Montgomery County.

6 Secondly, I don't think the Simon v. State is
7 apposite to this one. I think it is inapposite. The
8 situation in Simon v. State did not involve the
9 factors here which are the exact same incident in
10 separate indictments if I'm not mistaken. So Simon
11 v. State would not be a good case, a case study for
12 this particular case.

13 So the facts remain as stated, is that there is
14 nothing stopping this Court from changing the venue
15 back to Montgomery County. Race, hopefully all of us
16 would attempt to exclude racism as a phenomenon in
17 this case. The fact is that having black witnesses
18 has never obstructed people from having racial
19 decisions before; all right.

20 I know of some cases that white people have
21 complained about where they thought racism was
22 involved because the jury was too black. There is a
23 famous one. I think they call it O. J. Simpson.
24 Most of the witnesses in that case were white. At
25 least to the perception of the whites who complained
26 about that case, their view was, is that having white
27 witnesses didn't stop the blacks from being biased
28 toward O.J. and giving him the verdict which many of
29 the whites in the community didn't believe that he

1 deserved.

2 Irrespective of that, what we are trying to do
3 is to nullify that. Now, of course, we understand
4 that the DA used that as an advantage in the last
5 trial and probably wants to use it as an advantage in
6 this trial. But if we get a jurisdiction where there
7 is a significant black population, all we would be
8 doing is trying to cut down the possibility, and
9 judges have spoken from this freely from the bench
10 before. "I want to make sure that we don't have any
11 kind of racial bias in this case. I don't believe
12 there is going to be any; I believe in these jurors,
13 but I want to make sure." So they will work to put
14 you in a position where they don't exclude blacks
15 from the venire, for instance, for frivolous
16 reasons.

17 In some instances they will even share with you
18 in bench conferences on the issue: "I'm not going to
19 let this person go on this hardship excuse even
20 though it's marginal and I might let them go. What
21 I'm going to do here is I'm going to keep these
22 people in this pool, be it a black person or a white
23 person in a pool which is predominantly black or a
24 pool which is predominantly white, I'm going to keep
25 them in this pool so that there will be a fair
26 opportunity to choose from a cross section of the
27 community."

28 We are asking this Court to go beyond what it
29 may be absolutely mandated to do in any particular

1 case. There are cases which raise concern about
2 changing of venue to particular jurisdictions which
3 are much less proportionately black than the one that
4 the case is coming from. The case in question
5 actually-- there is a series of cases.

6 In one instance the Supreme Court decided a case
7 where they said that that is one of the things that
8 can be considered. In other words, whether the
9 jurisdiction that you are sending the case to is
10 proportionately the same racially and demographically
11 as the place that you are sending it from. And then
12 there is a case which comes out later that says that
13 that is not an absolute requirement. You don't have
14 to send it to a county which is demographically the
15 same.

16 But, you know, I should hope that the Court
17 doesn't have to have the Supreme Court give it an
18 order in order for it to do the fair thing. I think
19 it should be abundantly clear that it was difficult
20 to get any blacks on this jury up here because first
21 of all, you started with a low ratio of blacks in the
22 jury pool anyway, and I understand that the
23 prosecution saw fit to exclude a number of them
24 anyway, and then I guess some of them excluded
25 themselves. But for whatever reason, the point is,
26 is that, if that is going to be used as a con-
27 sideration, and I suggest that it does, that
28 consideration militates in favor of returning the
29 case to Montgomery County as well as the other

1 considerations which I put before this Court.

2 BY MR. HORAN: Nothing further, Your Honor.

3 **BY THE COURT:** The Court finds that the Simon
4 pretty well answered these questions, and contrary to
5 the position of the Defendant, they are of the Court,
6 and so the Court finds that racial demographics are
7 not something for it to consider. The fact that
8 change of venue has been changed, the Defendant is
9 not automatically entitled to a second change of
10 venue. He could possibly be entitled to a change of
11 venue if a proper showing is made. In order to make
12 that showing, one, motion for change of venue must be
13 filed with two statutory affidavits. Until such time
14 as the affidavits are filed, no presumption arises as
15 to whether or not, that the State must rebut, that he
16 could not get a fair trial here. There has been no
17 testimony before the Court that he cannot get a fair
18 trial in Lee County, and the Motion is overruled at
19 this time.

20 As I have done with the motion when I ruled on
21 it previously, I overrule the Motion at this time
22 because nothing has been presented to the Court that
23 would show that this person could not get a fair and
24 impartial trial in Lee County. However, if that is
25 presented to the Court or if during voir dire it
26 becomes apparent from the questioning of the venire
27 at that time that the Defendant cannot get a fair
28 trial in Lee County, the Court will sustain the
29 Motion for Change of Venue and move it to another

1 jurisdiction.

2 Okay. What is next?

3 BY MR. LUMUMBA: The Defendant has a Motion for
4 Change of Venue.

5 BY THE COURT: I thought we just heard that.

6 BY MR. LUMUMBA: Well, that wasn't what I just
7 argued. I just argued a Motion to Change Venue from
8 Montgomery County-- no, a motion -- what I argued was
9 a Motion to Return the Venue to Montgomery County.
10 But my argument would be similar as it relates to a
11 Motion for a Change of Venue period.

12 BY THE COURT: All right, my ruling would be the
13 same. That Motion is overruled.

14 BY MR. LUMUMBA: And there are several cases, by
15 the way, in the Motion that we read-- in the Motion
16 that we filed, I'm sorry, which in fact, do deal with
17 the issue of the Court can properly consider the
18 racial composition of the jury-- of the jurisdiction
19 in order to make a decision where it changes the
20 venue to. In fact, not only--

21 BY THE COURT: --Well, I didn't say I wouldn't
22 consider it, Mr. Lumumba. What I said was that, one,
23 you have not properly presented the motion--

24 BY MR. LUMUMBA: Well, it says--

25 BY THE COURT: --Wait a minute now. You don't
26 interrupt me either, okay? Two, you have put on no
27 evidence that this person could not get a fair trial
28 at this time. I am overruling this Motion at this
29 time. I am telling you at such time as you present

1 evidence to this Court that shows that he can't get a
2 fair and impartial trial in this county, I'm going to
3 sustain that Motion and move venue. But I'm not
4 going to do it until you do something. I am not
5 going to do it just because you filed an improper
6 motion.

7 BY MR. LUMUMBA: Well, I didn't file an improper
8 motion.

9 BY THE COURT: Well, it doesn't have the
10 statutory affidavits.

11 BY MR. LUMUMBA: I filed a proper motion.

12 BY THE COURT: Insufficient motion; excuse me.
13 How about that?

14 BY MR. LUMUMBA: No. Actually what I did, I
15 filed a motion sufficient to get the hearing date
16 continued and the motion day continued--

17 BY THE COURT: --We are not on that motion right
18 now--

19 BY MR. LUMUMBA: --which would have--

20 BY THE COURT: --We are on the Motion for Change
21 of Venue.

22 BY MR. LUMUMBA: Which would have allowed me to
23 have sufficient time to get the affidavits I needed
24 and things of that nature. But the point that I'm
25 making and I'm glad that I misheard the Court in its
26 earlier presentation because what the Court said in
27 its earlier presentation - and when it checks the
28 transcript, I think it will realize it - is that no
29 case has allowed you to consider the racial

1 composition when changing the venue.

2 **BY THE COURT:** I will consider anything that you
3 put before me. Let me tell you that right now. You
4 put it up there, and I will take it into account.

5 **BY MR. LUMUMBA:** Well, you should because that's
6 what the cases tell you to do.

7 **BY THE COURT:** I understand. That's what I'm
8 telling you I'm going to do.

9 **BY MR. LUMUMBA:** Okay. We have a Motion for
10 Funds for Expert Assistance in the fields of
11 psychiatry, psychology, mitigation investigation, and
12 criminal investigations, shoe print analysis,
13 ballistics, and firearms analysis. We need experts
14 in all those areas. Essentially one of those experts
15 is what you call a mitigation expert or a mitigation
16 investigator. This is a person who will gather
17 information about the Defendant and have it prepared
18 to present at the sentencing stage should the
19 sentencing stage occur.

20 The first expert that we asked for speaks for
21 itself, expert in the area of psychiatry and
22 psychology. Then we need an investigator, just a
23 straight out investigator who will help us
24 investigate some of the facts of this case
25 particularly on the fairly limited time which the
26 Court has given this case to be set for trial at this
27 time. And then we need a person who is an expert in
28 shoe print analysis and ballistics and firearms
29 expert.

1 We do have experts who we are familiar with who
2 would be interested in helping in all these areas
3 should they have confirmation from the Court that it
4 is prepared to pay for this expertise. Psychology
5 and psychiatry, a Dr., uh-- we have a couple of
6 different doctors. One is Wood Hiatt, City of
7 Jackson, and the other one is Dr. Summers, and there
8 is actually a third doctor who is on Lakeview in the
9 City of Jackson whose name escapes me right now.

10 Mitigation experts: We have two from the State of
11 Alabama and one from the State of Mississippi, so we
12 would be able to use one of either of those. And we
13 have experts in various other areas which I have
14 indicated to the Court should the Court grant this
15 Motion.

16 BY MR. EVANS: Very briefly, Your Honor, we
17 discussed with opposing Counsel in this case and the
18 other three cases earlier the possibility that they
19 would hire experts in some of these areas. They
20 elected not to do that at that point. They could
21 have hired experts if they wanted to. They had ample
22 money to hire experts with. Obviously, instead of
23 just keeping the same two attorneys that they had,
24 they went out and spent money to hire two more
25 attorneys. They could have used that money to hire
26 experts if they wished. He was not indigent at that
27 point. He is not indigent now because he had money
28 to hire and has hired four separate lawyers to handle
29 this case. And to ask for the county to pay for

1 something that he could have paid instead of hiring
2 four counsel in this, would be improper and would be
3 asking for a burden to be placed on the county that
4 is not necessary.

5 BY MR. LUMUMBA: Well, let me be very clear--

6 BY MR. EVANS: --I'm not through yet.

7 BY MR. LUMUMBA: All right.

8 (State's Counsel confer.)

9 BY MR. EVANS: Also, even if opposing Counsel
10 was entitled to this, which they are not, they have
11 to furnish to the Court who these experts would be,
12 what they would expect to call them for, and an
13 expected price of what they would charge for these.
14 That has not been done. But more specifically, he is
15 not entitled to them because he had funds and he
16 chose how he wanted to spend his money.

17 BY MR. LUMUMBA: Actually, the last part of that
18 is incorrect. What would happen is that if the Court
19 was to grant this Motion, then we would have to
20 furnish information on the areas of how much the
21 experts would cost, what their expertise is, what
22 their vitae is to the Court in an ex parte hearing.
23 They would have nothing to say and nothing to do with
24 who we actually chose. It's inappropriate for them
25 to have even been involved in it just like we don't
26 choose their experts.

27 BY THE COURT: That is not what he is saying.

28 BY MR. LUMUMBA: Well, what he is saying is that
29 at this point in a public motion which is being

1 argued in a court, we are required to give that
2 information. They are not entitled to be present at
3 a hearing where that information is forthcoming just
4 like we are not entitled to determine what experts
5 they get although the county pays for them. The
6 county pays for their experts too. So they don't
7 have anything to say about who it is. They can argue
8 the proposition, if they like, that we are not
9 entitled to it, and that's what I will direct my
10 inquiry to or my response to.

11 First of all, let me say this, is that the
12 Defendant is indigent. The Defendant has no money,
13 has no job, has no way of paying anyone. The courts
14 have held because there is some kind of committee or
15 some kind of individual separate than the defendant
16 who is prepared to hire that defendant an attorney,
17 that does not deprive the defendant of the right as
18 an indigent to the appointment of experts which will
19 assist the defendant. And some cases have actually
20 held that even where you have a retained attorney,
21 there is a right to a second counsel. If the
22 defendant can't afford one or has not even hired the
23 first one, then he could be, in fact, entitled to
24 have a second one appointed.

25 But in any event, and here again, we have cited
26 a number of cases which I think backs all these
27 propositions that we are raising in the Motion
28 itself. But absolutely, this is an indigent
29 defendant. He has no money. If he ever had any, he

1 certainly doesn't have any at this point because of
2 where he has sat for the last significant period of
3 time. He has no job, has no way of hiring any of
4 these experts, and so we are asking the Court to do
5 it. What his mother or his father or his relatives
6 may be capable of doing is actually an irrelevant
7 consideration. But for the record, they don't have
8 the kind of resources which is necessary to hire any
9 of these experts either, and the experts are sorely
10 needed.

11 So we would request the Court, and it may very
12 well be that the reason why the Defendant has
13 retained new counsel is because he decided that these
14 are the kinds of things that he needs for this case.
15 But that is up to the Defendant. He doesn't have to
16 air his linen out here in terms of what he wants his
17 counsel to do and what he doesn't want his counsel to
18 do and the reason why he chooses counsel. But no
19 inference can be made by the fact that counsel in the
20 last case didn't do these things, that he shouldn't
21 want them in this case. That is not a meritorious
22 argument.

23 BY MR. EVANS: Very briefly, Your Honor; there
24 has been no showing in this Motion that any of the
25 experts that testified before this Court had any bias
26 or that anything in their testimony was incorrect.
27 Also, there has been no showing of any testimony or
28 evidence before this Court that any supposed expert
29 that they might dream up would say or could say

1 anything contrary to what testimony was already been
2 adduced at trial in this case which I think they have
3 to do to show that they are entitled to have one even
4 if the Defendant were indigent, which anyone that can
5 hire four attorneys is not indigent.

6 BY MR. LUMUMBA: Well.

7 BY MR. EVANS: Also, Your Honor, where there
8 have been four and are four lawyers up to the point
9 that the Defendant now wants to release two of them,
10 he has hired them; they are there; he has paid them.
11 The Court has already ruled that they have got to do
12 what he wants. If they want somebody to go out and
13 question witnesses, there are four of them that can
14 go out and question anybody they want to.

15 BY MR. LUMUMBA: At this point the Defendant
16 only has two lawyers because the Court has already
17 released two of them from this case.

18 BY THE COURT: From this case, right.

19 BY MR. LUMUMBA: Yeah, from this case and that's
20 the only case we are talking about; right?

21 BY THE COURT: Yes, sir.

22 BY MR. LUMUMBA: Okay. Well, if that's the
23 case, then that argument is obviously misplaced
24 completely. But secondly, so is the criteria is that
25 in order to get an expert appointed, you have to be
26 able to afford an audience with an expert? Most
27 people who try cases know that experts don't come
28 free in their consultation. They don't come free in
29 analyzing facts. This is a novel idea which Counsel

1 has put before me, so I am looking for the case law
2 which supports this, that you have to be able to
3 afford an expert who will tell you he is going to
4 testify differently before you can hire an expert
5 today and come to court and testify. If that was the
6 case, then no indigent would ever have an expert.
7 Indigents ask for an expert on day one after the
8 indictment in many different jurisdictions, and they
9 get expert testimony in those jurisdictions. I think
10 that you are absolutely compelled in a death penalty
11 case to give it to them if they ask for it.

12 And the situation is, is that we want experts
13 who will evaluate the evidence and tell us what their
14 testimony would be. We are then free, if we want to,
15 not to call the experts which, in fact, perhaps would
16 save the county some money. But the initial part of,
17 the initial benefit to an expert and the initial
18 reasons why courts appoint experts is so that the
19 expert can evaluate the evidence which is before it,
20 listen and read the testimony, if they can't listen
21 to it because they weren't in the case at that time,
22 read the testimony which prior experts have made, and
23 then give us an opinion. He cannot afford to hire an
24 expert to do that. So we are asking for the Court to
25 appoint experts who will do that, pay experts who
26 will do that, and then at that point we will
27 determine whether that expert should be called to
28 testify.

29 The other thing that-- and that is one of the

1 reasons why it's an ex parte proceeding to even
2 establish an expert. So should we, for instance-- a
3 defendant is totally protected against incriminating
4 himself. So should we come up with an expert who
5 doesn't have anything that would help our case but
6 would only buttress the State's case for whatever
7 reason, then we are not required to call him. We are
8 not even required to expose who he is except to the
9 Court, and the Court is obligated not to expose it to
10 anybody else. So that is the law. Now what the
11 prosecutor is talking about I'm not quite certain,
12 but that is the law.

13 Now the other thing is that-- and that is the
14 law that is cited in this brief in any number of
15 cases. And so what we would say, the other thing is
16 the mitigation expert; the person who would gather
17 information, help us gather information on the
18 Defendant's background is extremely important. There
19 is people who have expertise in this area and do this
20 all the time. And so what we would need is a
21 mitigation expert--

22 **BY THE COURT:** --They have been, you have had
23 folks that testify as an expert? Courts have allowed
24 them to testify as an expert in the area of
25 mitigation?

26 **BY MR. LUMUMBA:** No, no. They are
27 investigators, Judge. You have to understand what
28 I'm saying.

29 **BY THE COURT:** Okay.

1 BY MR. LUMUMBA: In answer to that question, the
2 second question is yes too. In some cases they have.

3 They have mitigation experts. Usually they are
4 people who, in many instances they are social
5 workers, or in some instances you have people who are
6 former penal institution directors that come in and
7 talk about mitigation. They are considered
8 mitigation experts, but I'm not even getting to
9 that. What I'm getting to is the fact that we are
10 entitled to a mitigation investigator. A mitigation
11 investigator would be a person who would accumulate
12 the facts which are necessary to make a cogent and an
13 important presentation at a sentencing stage in the
14 Defendant's behalf.

15 He has already had one sentencing hearing where
16 he didn't fare well, and so I think that that is a
17 sufficient indication that there is a possibility of
18 a possibility that he could go to a second sentence
19 hearing, sentencing hearing which would require this
20 Court to do this.

21 The only way that I have seen any cases upheld
22 where they denied this is where the Court says this
23 is not a real death penalty case. They really don't
24 expect this to go for a death penalty. The fact is
25 recently Judge Goza down in Madison County dismissed
26 the death penalty portion of a case, and that is the
27 only reason that the courts will uphold the denial of
28 the resources to do this unless you can show that the
29 man is a multimillionaire or he has sufficient

1 resources to hire them on his own.

2 And that is a showing which you definitely can't
3 do because first of all, Counsel doesn't know. We
4 can't bring experts in this case pro bono. I can
5 make that representation to the Court. Counsel has
6 no idea what kind of fees has been paid to us. I
7 don't know what he knows about the prior attorney.
8 You cannot go based upon the fact that we are in the
9 case. We may be in this case pro bono ourselves.
10 There is nothing on this record, nor is he entitled
11 to any information. The Court is entitled to a
12 hearing ex parte, if the Court wants to have a
13 hearing ex parte, if it wants to spend that kind of
14 time to find out that he has no money. But unless he
15 can prove that he has money, he has money to hire
16 experts, then his argument is frivolous.

17 **BY THE COURT:** What about, Mr. Lumumba, the case
18 law that says that you have to present to me the
19 names of these people that you want to hire, what
20 they are going to cost, how much time it will take,
21 and what they intend to testify to?

22 **BY MR. LUMUMBA:** We will present that to you, to
23 you alone in an ex parte hearing. And I think that
24 you will find in that case law that we are entitled
25 to an ex parte presentation on that issue.

26 **BY THE COURT:** Can you cite me that case?

27 **BY MR. LUMUMBA:** If you could allow me to look
28 at my records, I will cite you a case before we leave
29 here. I will tell you that for sure.

1 **BY THE COURT:** All right.

2 BY MR. LUMUMBA: I will cite you that case
3 before we leave.

4 **BY THE COURT:** What would the psychiatrist
5 testify to? You can tell me that.

6 BY MR. LUMUMBA: I would have no way of knowing
7 exactly what a psychiatrist would testify to--

8 **BY THE COURT:** --Well, do you anticipate an
9 insanity defense?

10 BY MR. LUMUMBA: --until such time as the
11 psychiatrist has an opportunity to look at my client.

12 **BY THE COURT:** Do you anticipate an insanity
13 defense?

14 BY MR. LUMUMBA: I don't anticipate one nor do I
15 not anticipate one at this particular point in time.

16 **BY THE COURT:** Well, the psychiatric part of it
17 would be more properly brought on a motion for
18 psychiatric examination. I might consider it at that
19 point, might.

20 BY MR. EVANS: Your Honor, I have a couple of
21 things I would like to bring up when Mr. Lumumba is
22 through.

23 **BY THE COURT:** Okay, let me look at the Motion
24 just a second.

25 (Pause while the Court reads.)

26 **BY THE COURT:** Do you intend to present these
27 things to me, Mr. Lumumba?

28 BY MR. LUMUMBA: Do I intend to present to you
29 people and what their prices would be?

1 **BY THE COURT:** Yeah, what they are going to
2 investigate.

3 **BY MR. LUMUMBA:** Yes. Yes.

4 **BY THE COURT:** When do you want to do that?

5 **BY MR. LUMUMBA:** I would ask to be able to do
6 it, one second. (Defense Counsel confer.) We can do
7 it within two weeks, Judge. I mean probably shorter
8 than that, but certainly within two weeks period. We
9 can give you affidavits from people with their vitae
10 in it and what areas they would be examining.

11 **BY THE COURT:** You understand now it has got to
12 be relevant to this case. The fact that they are
13 psychiatrists and they can testify folks that are
14 mentally ill is fine, but if it's not relevant to
15 this Defendant, and they have got a whole record to
16 look at, I don't see how you are going to make it
17 relevant to this Court.

18 **BY MR. LUMUMBA:** If it is not relevant to this
19 case, then I really wouldn't want them anyway. Okay,
20 so anything that I would present to the Court would
21 be relevant to this case. If I am not mistaken, this
22 is a case where ballistics is at issue.

23 **BY THE COURT:** I'm not sure about this case.

24 **BY MR. LUMUMBA:** Well, if I am persuaded to the
25 contrary, then certainly I won't need an expert. But
26 I understand this is a case where ballistics and
27 firearms is at issue. Clearly, there is a shoe print
28 issue.

29 **BY THE COURT:** I can rule on the shoe print

1 issue. The shoe print testimony was something a lay
2 person could testify to. There was no expertise.
3 The guy happened to be an expert, but there was no
4 expertise required in his testimony.

5 BY MR. LUMUMBA: Well, what we would ask--

6 BY THE COURT: --So I deny the shoe print
7 expert.

8 BY MR. LUMUMBA: All right, well, then certainly
9 you are going to be willing to bar him from
10 testifying at the next trial because we don't want no
11 pretentiousness in terms of putting an expert person
12 who claims to be an expert up there to testify to
13 something that only a lay person would know.

14 BY THE COURT: I don't think he was qualified as
15 an expert as a matter of fact. Was he, Mr. Evans?

16 BY MR. EVANS: He has been. I'm not sure on
17 that particular case whether we asked for him to be
18 qualified as an expert or not.

19 BY THE COURT: There was one that was not. I
20 don't know whether he was qualified to that extent,
21 but as I recall the testimony, what he testified to,
22 that he found, he went to the scene and he found a
23 print, a bloody shoe print. He compared that with a
24 shoe print from a Nike shoe, which is something me
25 and you can do, and it was a similar print. He did
26 not say it was the same shoe or anything like that.

27 BY MR. LUMUMBA: Well, I know he didn't say it
28 was the same shoe. I know he didn't say that, but he
29 tried to testify; from what I understand, he

1 testified in such a fashion to suggest, you know,
2 there was a serious possibility it was the same
3 shoe. But the point I'm making--

4 **BY THE COURT:** --Well, he did that. He said
5 this shoe was probably made by a Nike.

6 **BY MR. LUMUMBA:** We will have no objection at
7 trial to a person testifying who actually went to the
8 scene, who actually saw something and actually
9 testifying to what he or she saw. We certainly are
10 going to have opposition to-- if we are being denied
11 an expert, we are going to have opposition to any
12 testimony, to anybody making any kind of expert
13 comparisons or anybody presenting their expert
14 credentials in court or anybody in any way presenting
15 themselves as an expert or giving expert testimony.
16 So I mean, but if the Court-- I think you made a
17 beautiful record for us to be able to stand on such a
18 motion should we have an opportunity or have the
19 necessity of doing so. So I don't have any argument
20 with that. If the Court is saying that no experts
21 are going to be allowed to testify on this issue,
22 then we don't need one.

23 **BY THE COURT:** Well, I didn't say that now. I'm
24 saying I'm not going to give you a shoe print expert
25 based on what I know. You can raise those objections
26 at the appropriate time to how he testifies, and
27 based on what I said, I may very well sustain your
28 objection. You are not giving up any objections to
29 that by my ruling now. I am just ruling that you are

1 not entitled to a shoe print expert based on what I
2 know about this case.

3 BY MR. LUMUMBA: Well, we will, what I would ask
4 the Court is to keep that, take that part of the
5 Motion with the rest of it under advisement, and we
6 will give you our presentation and affidavit and
7 refer you to what the expert in this, the so-called
8 expert in this previous case did testify to. And if
9 that is the Court's ruling at that time, then
10 certainly we will abide by whatever the Court says.

11 But the point is, is that the only thing that I
12 am saying, it don't seem like we should be able to do
13 this thing-- saying we should use the same yard
14 stick. Either we should have money to get an expert
15 and there is an expert issue here, or nobody should
16 have an expert. It seems to me it should be one way
17 or-- it should be both; it can't be both, one way on
18 the one hand and the other way on the other hand.

19 BY MR. EVANS: Your Honor--

20 BY THE COURT: --Of course, that is not the
21 law.

22 BY MR. EVANS: Since opposing counsel stated
23 that they were not aware of the law, I would like to
24 state what the law is. This particular case is
25 dealing with psychiatry. It says, "A criminal
26 defendant does not have the right to a psychiatrist
27 of his choice or to receive funds to hire one of his
28 choice. Rather he has a right to a competent one."
29 Unless he can show that any expert that has testified

1 in this case was not competent, they are not entitled
2 to funds to hire any expert in any field, which they
3 cannot do.

4 BY MR. LUMUMBA: What case is that?

5 BY MR. EVANS: Also, that particular case, the
6 particular cases that state that are Butler v. State,
7 608 So.2d 314; also Wiley v. State, 585 So.2d 660.

8 Also--

9 BY MR. LUMUMBA: Are either one of those death
10 penalty cases?

11 BY MR. EVANS: Also--

12 BY MR. LUMUMBA: --I don't think I am going to
13 get an answer to the question.

14 BY MR. EVANS: Your Honor, would you ask the
15 opposing counsel to shut up until I get through?

16 BY THE COURT: No, no, no, whoa now, Mr. Evans.
17 Let's don't do it that way.

18 BY MR. LUMUMBA: I'm sorry; I apologize. I was
19 acting a little bit like he was earlier.

20 BY THE COURT: Okay, you just have a seat.

21 BY MR. LUMUMBA: I apologize, but he--

22 BY THE COURT: Wait, Mr. Lumumba. He has still
23 got the floor. Then you are going to get to talk.

24 BY MR. LUMUMBA: Okay, excuse me.

25 BY MR. EVANS: Also, when no attempt is made to
26 use the insanity defense during the guilt phase, no
27 right to an independent mental examination exists.
28 That is also under Wiley v. State, 585 So.2d 660;
29 also Ladner v. State, 584 So.2d 743; also Pinkney v.

1 State, 538 So.2d 329; also Lanier v. State, 533 So.2d
2 473; also Nixon v. State, 533 So.2d 1078; also Ake v.
3 Oklahoma, 470 US 68. "Where insanity is not used as
4 a defense or is abandoned at trial, the trial court
5 may prohibit a mental health expert from testifying
6 during the guilt phase." That is Jackson v. State,
7 684 So.2d 1213.

8 Also, as further stated in Ake v. Oklahoma,
9 "When the State does not present mental health
10 experts during the sentence phase to establish future
11 dangerousness, the Defendant has no right to
12 independent mental health experts." That is also
13 cited in Nixon v. State, 533 So.2d 1078.

14 This would also apply to all of the other
15 experts in this case. Not only does the Defense have
16 to state who they expect to call, they have to
17 establish specifically, according to Harrison v.
18 State, 635 So.2d 894, along with a long list of other
19 cases, that the Defendant has a substantial need for
20 that expert. They are going to have to show two
21 different things. They are going to have to show
22 that the expert that has testified was wrong and that
23 they have some need in having some new expert because
24 if they cannot show that, then by all case law that I
25 have ever seen, as long as the expert is competent
26 that testified, they do not have a right for funds to
27 hire another expert.

28 BY MR. LUMUMBA: Judge--

29 BY MR. EVANS: And every case cited in here is a

1 death penalty case.

2 **BY THE COURT:** I gathered that.

3 BY MR. LUMUMBA: Judge, well, let me say this.
4 I think the Court needs to read those cases. I have
5 read those cases too, and the position that he has
6 taken is absurd. There is no requirement that in
7 order for us to get an expert to examine these areas
8 that we have to prove that their expert was wrong.
9 How are we going to prove that their expert is wrong
10 unless we have an expert which is going to make an
11 inquiry into the area and give us information which
12 would suggest that that is the case? The reality
13 is--

14 **BY THE COURT:** --But you don't have any expert
15 that you are asking for that that would be the case
16 anyhow. There has been no psychiatrist testify.
17 There has certainly been no mitigation expert
18 testify--

19 BY MR. LUMUMBA: --We have--

20 **BY THE COURT:** --Wait a minute; let me finish.
21 There is-- what is the other one you want?

22 BY MR. LUMUMBA: Go ahead. I will let you
23 interrupt me.

24 **BY THE COURT:** Well, I don't think I did, Mr.
25 Lumumba.

26 BY MR. LUMUMBA: That is quite all right. Go
27 ahead; it's okay. I am not concerned.

28 **BY THE COURT:** There is a ballistics and
29 firearms expert. Uh, oh, well.

1 BY MR. LUMUMBA: Yes, there was a ballistics and
2 firearms expert testified at the trial if I'm not
3 mistaken.

4 BY THE COURT: What authority do you have that
5 this is an in camera hearing?

6 BY MR. LUMUMBA: There is a whole motion on this
7 issue, Judge.

8 BY THE COURT: I realize that; I want the case.

9 BY MR. LUMUMBA: --where we request that the--
10 do you want to give me ten minutes to get it?

11 BY THE COURT: No, sir. I would like for you to
12 have it now.

13 BY MR. LUMUMBA: I need ten minutes to get it.
14 If you really want it, then I can get it in ten
15 minutes.

16 BY THE COURT: Well, you are going to have to
17 have it before I do an in camera hearing.

18 BY MR. LUMUMBA: Well.

19 BY THE COURT: We will break for lunch; be back
20 at 1 o'clock. Any other case law you have got that
21 you want to cite to me, I wish you would have
22 prepared by then.

23 BY MR. LUMUMBA: Do you want to read these
24 motions because I have cited quite a few case law?

25 BY THE COURT: Yeah, I want to see them. I have
26 read the motions.

27 BY MR. LUMUMBA: It's at least twenty cases
28 cited in this Motion.

29 (FOLLOWING THE NOON RECESS ON 1/5/98, MOTION

1 PROCEEDINGS CONTINUED WITH ALL COUNSEL AND THE
2 DEFENDANT PRESENT AS FOLLOWS:)

3 BY THE COURT: Let me see y'all on another
4 matter; you too, Mr. Evans. You can shut the door.
5 We will have to have it shut.

6 BY MR. JOHN JOHNSON: It will be warmer.

7 BY THE COURT: That's okay.

8 (Conference at the bench on another matter after
9 which there was the following:)

10 BY THE COURT: Okay, where are we?

11 BY MR. LUMUMBA: Well, Judge, you had asked me
12 to get some cases to basically convince you that we
13 were entitled to the kind of hearing that you just
14 held with the prosecution at the bench in ex parte
15 hearing. Now I don't know, of course, if that
16 hearing was ex parte on our case, but it was ex parte
17 on somebody's case, and that is the kind of hearing
18 we are talking about, a hearing where we can sit and
19 talk to you where the other side is not entitled to
20 be present. Just like the other side of whatever
21 case you just got finished discussing wasn't present
22 when you talked to them.

23 The case is Ake v. Oklahoma, 470 US 82. Ake v.
24 Oklahoma essentially says that the reason why these
25 hearings should be ex parte when they relate to a
26 capital murder case and they come to the question of
27 what experts the defense is seeking to use is because
28 of the very nature of the offer of proof in order to
29 convince the Court that the expert needs to be called

1 is a showing which could reveal the mental processes,
2 the thinking of the defense team and compromise their
3 ability to have those things not disclosed.

4 **BY THE COURT:** That is 470 US 82?

5 BY MR. LUMUMBA: 470 US 82.

6 **BY THE COURT:** Okay.

7 BY MR. LUMUMBA: I think Counsel cited it in
8 support of something else. Yeah, but it's actually
9 470 US 68, but I think what we are talking about is
10 at 82 in that case.

11 Now the other case we have is Johnston, spelled
12 with an S-T-O-N, v. State, and what we do have on
13 Johnston v. State, we don't believe that Johnston v.
14 State was a published opinion, but the Supreme Court
15 number on it is 90 M-0271.

16 **BY THE COURT:** But if it's not published, you
17 can't cite it.

18 BY MR. LUMUMBA: Well, let me tell you what the
19 Johnston v. State case said because even though you
20 can't--

21 **BY THE COURT:** --Well, the Supreme Court said and
22 the Rules say you can't do that.

23 BY MR. LUMUMBA: Well, the Rule doesn't say I
24 can't discuss the case.

25 **BY THE COURT:** Yes, sir; it does.

26 BY MR. LUMUMBA: Well, let me-- pardon?

27 (Defense Counsel confer briefly.)

28 BY MR. LUMUMBA: Johnston v. State, I believe
29 they may have, my counsel says that they actually

1 have cited it already. Well, let me tell you this,
2 Judge. I am going to tell you what I believe would
3 happen, and there is a case called Johnston v. State
4 that supports this scenario.

5 **BY THE COURT:** Well, not if it can't be cited,
6 it doesn't support it.

7 BY MR. LUMUMBA: Well, let me say this.
8 Basically in a situation where the defense sought
9 psychiatrist's testimony and made an appeal
10 interlocutory to the Court of Appeals, in fact, the
11 Court of Appeals to the Supreme Court actually,
12 indicating that they felt they had a right to make an
13 ex parte showing of their need for psychiatrists, the
14 Supreme Court refused - and that's the only reason I
15 cite it - but they refused to grant the interlocutory
16 appeal. That's what they did. They said it wasn't
17 necessary, but they sent an order to the trial judge
18 ordering the trial judge to grant an ex parte hearing
19 in the matter, indicating by the order that the
20 defense had a right to an ex parte hearing on the
21 question.

22 So those are the things which I believe the
23 Court should be interested in. Now, you know, you
24 know, if I-- I mean, you know, this man's life here
25 is at stake, so really to be quite honest with you,
26 Judge, I am here to represent him. And I am here to
27 be clear and to be honest and to put the things on
28 the record which need to be put on the record. And
29 if the Court really wants to know the state of the

1 law, then it will learn the state of the law
2 irrespective of whether the case is published or
3 not.

4 **BY THE COURT:** It's not the law though, Mr.
5 Lumumba. If you can't cite it, it not stare
6 decisis.

7 **BY MR. LUMUMBA:** Ake v. Oklahoma is the law and
8 even if--

9 **BY THE COURT:** --Okay, but the other, the
10 Johnston case is not.

11 **BY MR. LUMUMBA:** And even if Johnston v. State
12 is not stare decisis, it is still something that
13 would inform a court that wanted to be informed. In
14 fact, the Court's statement that the Court made to me
15 is an amazing statement. As long as I have been
16 practicing, and I have been practicing since 1976; I
17 practiced in over ten different states and all before
18 all kinds of courts in all kinds of jurisdiction.
19 Never has any court ever told me, don't tell me about
20 that case because it's not cited. Judges usually
21 want to know as opposed to not want to know, unless
22 they have some other kind of agenda on hand. Now
23 what I'm trying--

24 **BY THE COURT:** --That must be what the Supreme
25 Court had in mind when they passed a rule saying that
26 you couldn't cite--

27 **BY MR. LUMUMBA:** --Well, that is cute, Judge,
28 but at the same time the question I am concerned
29 about is whether or not you really want to know what

1 the law is.

2 **BY THE COURT:** It's not the law, Mr. Lumumba.

3 BY MR. LUMUMBA: I'm trying to provide you with
4 what the Court-- don't you think it's somewhat
5 instructive, what the Court did--

6 **BY THE COURT:** It's not the law.

7 BY MR. LUMUMBA: It is instructive and do you
8 want to be informed?

9 **BY THE COURT:** Not on a case that cannot be
10 cited.

11 BY MR. LUMUMBA: Or do you already have some
12 prearranged decision of what you are going to do in
13 this case?

14 **BY THE COURT:** I want you to instruct me on the
15 law in the cases that are the law that can be cited.

16 BY MR. LUMUMBA: Well, I have just instructed
17 you on the law in Ake v. Oklahoma. Now what you
18 should have been a little more concerned about is the
19 fact that they read the same case to you and didn't
20 see fit to point out to you that that is the case
21 that stands for the exact proposition that you were
22 seeking guidance on. Usually the Court would be a
23 little more concerned about that, but since it's not,
24 the situation that I'm saying to you at this point is
25 that it's clear that we have a right to have an ex
26 parte hearing.

27 Also, I want to make it absolutely perfectly
28 clear although you have chosen, not us, you have
29 chosen to set the dates that were set. You have also

1 chosen to go, especially the motion dates is what I'm
2 talking about. You have chosen to put our motion for
3 a continuation of the motion hearing dates at the
4 end. The reason why we asked for that motion is
5 because we understood that it was some things that we
6 needed to do to support various motions in order to
7 be a bit more persuasive on them.

8 So that's a motion which needs to be granted
9 because certainly you would not want to be in a
10 position to have somebody go to trial and be
11 inappropriately represented, and I'm going to state
12 here for the record there is no way that any court
13 should ask any attorney to go to trial two months
14 after they have entered into a case and with this
15 kind of voluminous transcript and other information
16 and the other kind of things which are necessary to
17 do in a death penalty case. And so, and what this
18 Court should be concerned about is this gentleman
19 here getting effective representation. And so what
20 I'm suggesting to the Court is that motion should be
21 granted.

22 I am also suggesting that it should be granted,
23 and in fact, we should be allowed to make a
24 presentation of Ake, not of Ake, but presentation of
25 affidavits and of an ex parte presentation like you
26 just had with the other counsel at the bench without
27 the other side present.

28 I'm sorry that the Court sees it necessary to
29 sigh and, you know--

1 **BY THE COURT:** I didn't sigh.

2 BY MR. LUMUMBA: And apparently--

3 **BY THE COURT:** --I'm not sighing, Mr. Lumumba.
4 I am listening to every word you say. I just leaned
5 back in my chair. Is that okay?

6 BY MR. LUMUMBA: Okay. Well, I like, you know,
7 when I argue to a judge, I like to be a little more
8 confident that they are really, you know, there
9 objectively, impartially.

10 **BY THE COURT:** Good; I want you to be.

11 BY MR. LUMUMBA: You know, this kind of stuff
12 like, (Counsel sits down in his chair and folds his
13 arms.) You know, that doesn't encourage my faith in
14 the system of justice or in the Court that I'm--

15 **BY THE COURT:** --Well, I'm sorry, Mr. Lumumba,
16 if I offended you; I apologize. Please proceed.

17 BY MR. LUMUMBA: All right, don't worry about my
18 personal predilections. I'm not so thinly offended.
19 I mean I have been before people who weren't always
20 impartial before, but I think it is important for
21 Mr., for the gentleman's case right here, for our
22 Defendant's case. Okay, but in any event, that is
23 our offer as far as this issue is concerned.

24 BY MR. EVANS: May I ask the Court what we are
25 even on any more?

26 BY MR. LUMUMBA: Well--

27 BY MR. EVANS: --I'm asking the Court a
28 question.

29 **BY THE COURT:** I asked him to give me some

1 precedent for an in camera hearing on this matter and
2 which he did according to-- I need to read that
3 Oklahoma case and see what it says. But he has cited
4 some authority for that, and that's what I asked him
5 to do.

6 So okay, before we go any further on this, it's
7 apparent to the Court that I'm going to have to have
8 an additional hearing before trial on these matters.

9 BY MR. EVANS: Your Honor, may I interrupt the
10 Court just a second?

11 BY THE COURT: I'm not going to quit here. We
12 are going to finish--

13 BY MR. EVANS: --No, sir. It's on something I
14 think I need to put in the record. I would just like
15 to make sure that it's clear in the record that what
16 the Court had asked the District Attorney and
17 Assistant District Attorney about while ago had
18 absolutely nothing to do with this case because I
19 don't want them to come back later and say there was
20 a bench conference that was being held outside the
21 record of what the Court Reporter was taking down
22 about this case.

23 BY THE COURT: That conference was in relation
24 to Blakely v. State on a motion for post conviction
25 relief that is to be heard by this Court at 1 o'clock
26 on Wednesday. It has absolutely nothing to do with
27 anything here, but just so the record is clear, I
28 informed the State that I was going to enter an
29 order, for them to file an answer pursuant to statute

1 on that, and told them that we are going to have the
2 hearing at 1 o'clock on Wednesday unless they object
3 to having it that early. And all I was doing is
4 telling them what is going to happen, what they have
5 to do pursuant to statute. That is all that was
6 about.

7 Okay, you said you could hear this stuff within
8 two weeks?

9 BY MR. LUMUMBA: I said that I could get you as
10 far as the affidavits that you are requiring us to
11 get, which I don't have any problem with getting, we
12 can get those affidavits within two weeks as to the
13 experts in question; yes, that's what I'm saying.

14 BY THE COURT: Okay, all right. We also have
15 got the Motion to Suppress Witness Statements. You
16 want an evidentiary hearing on that, I believe; isn't
17 that correct?

18 BY MR. LUMUMBA: That's correct, Judge. We want
19 an evidentiary hearing on that. That is true.

20 BY THE COURT: Linda, do you have my schedule?

21 BY THE COURT REPORTER: I have a calendar. I
22 don't know if it has everything.

23 (Pause while Court looks at calendar.)

24 BY THE COURT: What days have y'all got open
25 during the next two weeks?

26 BY MR. LUMUMBA: Today is the 5th. I would be
27 available on the 19th.

28 BY THE COURT: That is not-- well, that is
29 within two weeks.

1 BY MR. LUMUMBA: That is a Monday; right?

2 BY THE COURT: Rico is set for that, isn't it?

3 BY MR. EVANS: Yes, sir.

4 BY THE COURT: I have a case that has to be
5 tried on that day.

6 BY MR. LUMUMBA: Okay. We can do something on
7 the 20th.

8 BY MR. FREELON: I have a trial the 20th.

9 BY MR. LUMUMBA: (To Mr. Freelon) Who has a
10 trial on the 20th? You do? Okay, I'm sorry.
11 Scratch the 20th. Co-counsel has a trial on the 20th
12 (To Mr. Freelon) Is it going to be over by the 21st?
13 .

14 BY MR. HORAN: Your Honor, I think Rico is set
15 that Friday, is it not, the 16th?

16 BY THE COURT: I think it was on a Friday too;
17 that's true.

18 BY MR. HORAN: It's the 16th, I believe, Your
19 Honor.

20 BY THE COURT: We might-- okay, you can do it on
21 the 19th?

22 BY MR. LUMUMBA: Yeah, I can have the
23 affidavits, and we can have the evidentiary hearing
24 on the 19th. I'm sorry; hold on one second.

25 (Defense Counsel confer briefly.)

26 BY MR. LUMUMBA: I'm sorry; is that a holiday?

27 BY THE COURT: Yes, sir; it is.

28 BY MR. LUMUMBA: Okay, the 20th; the 20th he has
29 a trial. The 22nd is fine-- 21st, I'm sorry; 21st is

1 fine. 21st is a Wednesday. Actually, I could even
2 do it on the 22nd. I cannot do it on the 23rd. I
3 can do it on that Friday which is the 24th.

4 **BY THE COURT:** That is Saturday. You don't want
5 to do it on Saturday.

6 BY MR. LUMUMBA: Okay, I'm sorry.

7 **BY THE COURT:** We can, but I would just as soon
8 not to.

9 BY MR. LUMUMBA: Okay, no, you are right. I can
10 do it the 21st or 22nd. I cannot do it on the 23rd
11 which is a sentencing day for somebody in Hinds
12 County. Y'all remember what we have got set the
13 22nd?

14 BY MR. EVANS: No, sir. I know starting the
15 12th we are in court in both Webster and Grenada
16 County, and cases have been set in both of them. As
17 far as, I would have to check to make sure what is
18 set.

19 **BY THE COURT:** I'm going to give you that
20 opportunity, but I am, of course, in the same bind.

21 BY MR. EVANS: Yes, sir.

22 **BY THE COURT:** And they are too.

23 BY MR. LUMUMBA: Starting what days, you say?

24 BY MR. EVANS: 12th.

25 BY MR. LUMUMBA: 12th; okay, let me say this.
26 We don't object if the Court doesn't object, as long
27 as we just know where to subpoena people to, to
28 having a hearing in a different county.

29 **BY THE COURT:** We are going to do that. We will

1 do that. It depends-- let me, I might look at my
2 calendar. We are either going to have to do it in
3 Webster County or Attala County, one of the two.

4 BY MR. LUMUMBA: Attala, or what is the other
5 one?

6 BY THE COURT: Webster. I'm in court in
7 Webster, and I will just have to see what is going to
8 happen up there. Okay, we will check all that before
9 we leave here today. Now we have got some other
10 stuff that we can hear though. All right, I can
11 speed up some of this for you. I will let you say
12 anything you want to say about it, Mr. Lumumba, but
13 let me give you what my ideas about some of these.
14 On your Motion for Additional Peremptory Challenges,
15 that is a motion that I have already ruled on, and I
16 have overruled the Motion, but I have overruled it
17 with the provision that should the facts indicate at
18 voir dire that there is the necessity for additional
19 peremptory challenges, I will grant that based on the
20 facts as presented. So I think it's-- but I will
21 hear from you if you want to make additional argument
22 on that.

23 BY MR. LUMUMBA: I don't have any additional
24 argument other than I would just use this as an
25 example of-- I mean given the Court's already having
26 ruled on it and given the Court's determination it
27 wouldn't recuse itself, there is nothing else that I
28 feel I can say other than what is in the Motion
29 itself.

1 But I would indicate to the Court two things:
2 A) that we will, we do think that is one of the
3 reasons why we should not have the same Court making
4 the decision on this case because you have ruled on
5 something in another case; and number two, which we
6 will further illuminate at a subsequent time as the
7 Court has invited us to do, at this time this case is
8 a little bit different standing. There has been a
9 trial in this jurisdiction already, and we will show
10 the Court that people have-- this case is much more
11 well known in this jurisdiction than it was back when
12 this Court, this Motion was initially considered. I
13 am assuming this Motion was initially considered
14 before the first trial.

15 **BY THE COURT:** It was.

16 **BY MR. LUMUMBA:** So those are the only things I
17 would add.

18 **BY THE COURT:** Okay. Well, that is in line with
19 what my ruling is, that if those facts are developed,
20 then I will allow additional peremptory challenges
21 for both sides.

22 **BY MR. EVANS:** Your Honor, again for clarify in
23 the record, I would just like to make it clear that
24 not only has the Court ruled on this particular
25 Motion in another case, but the Court has already
26 ruled on it on this particular case also.

27 **BY THE COURT:** I know, but I think that was my
28 ruling then.

29 **BY MR. EVANS:** Yes, sir.

1 **BY THE COURT:** Was that I would overrule it at
2 the time with reserving the right to entertain it
3 again if the facts supported it.

4 Okay, on your Motion to Preclude Admission of
5 Gruesome and Highly Prejudicial Color Photographs of
6 the Deceased, there are going to be some of those
7 admissible, but I think at the last hearing, at the
8 last trial there were only three or four. I'm going
9 to sustain that Motion to a certain extent. All the
10 photographs that they have will not be admitted. I
11 guess we will just have to sit down and go over those
12 photographs, Mr. Lumumba, as to which ones they are
13 going to ask to be admitted and which ones you are
14 going to object to.

15 **BY MR. LUMUMBA:** Right. Yes, and I agree with
16 that, and I would ask the Court just if they can show
17 us the ones that they specifically plan to admit,
18 then we can make specific objections to those
19 specific photographs.

20 **BY THE COURT:** Okay, then why don't we do that
21 on the day that we are going to have this other
22 hearing.

23 **BY MR. LUMUMBA:** Okay.

24 **BY THE COURT:** Okay, you have got a Motion for
25 Discovery of Information Regarding State's Experts.

26 **BY MR. EVANS:** Your Honor, as to that Motion,
27 that Motion has previously been brought up. It was
28 agreed at that time that the State would and did
29 furnish curriculum vitae on all experts, all field

1 notes that were used, all results, all experts. All
2 of that has already been available, given, furnished
3 to the Defense, and I would assume at this point they
4 have picked up their copies of the discovery.

5 BY MR. LUMUMBA: Let me, and perhaps if we may,
6 Judge, maybe what this will do is if we join-- I
7 think we have also made a Motion for Discovery of
8 Information Necessary to Receive a Fair Trial. I
9 imagine our argument would be the same for both of
10 these motions, and their response is probably going
11 to be the same. If you want to, we can entertain
12 these both at the same time.

13 BY THE COURT: That would be fine.

14 BY MR. LUMUMBA: Essentially, our position is
15 this. It's a legal position, but then there is a
16 practical side of it, and we are willing to work
17 within reason. The legal position is that since the
18 attorney Gilmores are no longer on this particular
19 case, then anything they were given does not mean we
20 were given it, and we are entitled to have all
21 discovery given to us.

22 Now the practical side of it is this, is that
23 there is a lot of material, okay, a lot of material.
24 It is very costly to reproduce it. I don't, we don't
25 mind reproducing what we can, and we will be willing
26 to work with them. But I would like to be able to
27 come to the State and ask for specific things and be
28 able to get them where the cost of reproduction is
29 going to be beyond the realm of the possible or be

1 very expensive.

2 But the second thing is this; the second thing
3 is this. We also don't want to be responsible for
4 anything that for whatever reason didn't get to us.
5 Okay, now what I'm saying to you on this matter is
6 the Gilmores, I am sure, have taken care of stuff.
7 They have given us a lot of stuff. But I want to be
8 able to check and make sure that I have everything
9 that the State has which is generated. I don't want
10 them to use as a reason for us not having something,
11 well, we gave it to the Gilmores, so therefore you
12 should have it. I don't think that that is the way
13 that works.

14 I think that we filed a fresh motion, and as new
15 attorneys, we are entitled to have everything. But
16 we will be willing to go over with them what they
17 have to offer versus what we have. And if we have
18 it, if we can reproduce it, then I don't have any
19 problem with it. But if we don't have it, number
20 one, or number two, if it's voluminous like, for
21 instance, the transcript of the previous trial --
22 actually my co-counsel tells me that you actually
23 ordered both of us to have a copy of that.

24 **BY THE COURT:** No, I didn't.

25 BY MR. LUMUMBA: Oh, you didn't? Okay. I
26 thought you did.

27 **BY THE COURT:** No, sir.

28 BY MR. LUMUMBA: Okay, well, those are my areas
29 of concern. A), where things are voluminous and B),

1 where we might not have it. I do want to have the
2 opportunity to go over with them if they can tell me,
3 go over with them what they have. If we have it, I'm
4 not going to require them to give it to us, but if we
5 don't have it, then it's a problem.

6 **BY THE COURT:** Okay, you are entitled to
7 everything you are entitled to under discovery. I
8 think that has been furnished. I don't know
9 whether-- did y'all get a receipt from them when
10 you--

11 **BY MR. EVANS:** Yes, sir; we did and also it's my
12 understanding that John Gilmore furnished on December
13 the 10th all the discovery to the Counsel that are
14 now in the case. They have the discovery. All they
15 have got to do is check it with the court file on
16 what we are showing that we gave on discovery. If
17 there is anything in there that they are saying they
18 don't have, we can discuss it. But it's ridiculous
19 to even think about asking that it be furnished again
20 when it's already been furnished once.

21 **BY THE COURT:** I'm not going to do that. Mr.
22 Gilmore, you have signed a receipt saying that you
23 got all the discovery; is that correct?

24 **BY MR. JOHN GILMORE:** I don't recall signing a
25 receipt for every particular item of discovery.

26 **BY MR. EVANS:** The certificate has been mailed
27 and filed on all of them. Some were signed and some
28 weren't.

29 **BY THE COURT:** Okay. I need a certificate from

1 you, Mr. Gilmore, in the file saying that you have
2 delivered everything that the District Attorney has
3 delivered to you to new counsel. And then, Mr.
4 Lumumba, you can check that, and if you find that
5 there is something missing, then you let the Court
6 know, and we will see about getting it to you.

7 BY MR. LUMUMBA: Can I ask the Court a
8 question? If that is the case, then how is Mr.
9 Gilmore supposed to proceed, assuming he needs all
10 the discovery items which he may not, for appeal?
11 But certainly, he is going to need the transcript,
12 and he may need some discovery. How is he to proceed
13 with a-- because at the state of things are right now
14 I think you have given us everything he has got, I
15 think. He may, he can correct me. But if that is
16 true, then he has nothing to work with, not only for,
17 he certainly has nothing to work with for his appeal,
18 and he has nothing to work with for a--

19 BY THE COURT: Well, then he can make copies and
20 keep what he needs. Y'all are both retained
21 counsel. I'm not going to require the state to
22 provide any more than what they have to provide. If
23 y'all want five or six copies, make five or six
24 copies.

25 BY MR. LUMUMBA: Let me say I think both Mr.
26 Gilmore's firm and my firm is doing a service not
27 only to this client but to the community. I'm not
28 sure if we wouldn't get paid more if we were assigned
29 counsel. But the reality is that, I mean I think

1 that, you know, I am asking the Court for some
2 consideration on this voluminous endeavor here. You
3 know what I'm saying?

4 **BY THE COURT:** The Court has already furnished
5 an extra transcript of this trial which is not
6 required. I did that in the interest of having, so
7 both counsel could have read it by this time and be
8 ready for trial. I also required that all that
9 discovery be delivered, I believe, by the 10th which
10 I gather, Mr. Gilmore, has been done; is that right?

11 **BY MR. JOHN GILMORE:** Yes, sir.

12 **BY THE COURT:** Okay. And if you have got it
13 all, I'm not going to make anybody else make any more
14 copies of it.

15 **BY MR. LUMUMBA:** Well, you have our exception to
16 that ruling, Judge.

17 **BY THE COURT:** Sure.

18 **BY MR. LUMUMBA:** Okay, and then I think that one
19 of these motions we listed the amount of material.
20 (To Mr. Freelon) Did we list how much material? All
21 right.

22 Okay, and so if that is not adequately done in
23 the motion, I will repeat, but I want the record to
24 show that we are talking about probably thousands of
25 pages here. You know, that's a lot--

26 **BY THE COURT:** --But you have it, don't you?

27 **BY MR. LUMUMBA:** Well, it's not a question we
28 have it. First of all, it's a question of whether
29 both counsel can use it, whether we can reproduce it,

1 whether we can reproduce it at a cost which is
2 rational given the kind of sacrifices we have to do
3 with this case, whether we can effectively,
4 effectively negotiate the things that we have to do
5 in order to be effective counsel in this case. That
6 is the issue.

7 BY MR. EVANS: --Your Honor--

8 BY MR. LUMUMBA: --And I am suggesting to you
9 that the volume of information makes that impossible
10 to do, but having said that, if the Court wants to go
11 ahead and do something different, it's okay.

12 BY THE COURT: Do you have the, do you have that
13 stuff in your possession?

14 BY MR. LUMUMBA: I have it in my possession
15 right now.

16 BY THE COURT: Then what is your objection?

17 BY MR. LUMUMBA: I don't know that I have all of
18 it. I have what Mr. Gilmore gave me.

19 BY THE COURT: Okay, well, what is your
20 objection?

21 BY MR. LUMUMBA: My objection--

22 BY THE COURT: --If you have got it all, what is
23 your objection?

24 BY MR. LUMUMBA: My objection is he has asked
25 for it back. He has asked for it back, and I think
26 that as an attorney--

27 BY THE COURT: --Well, that is between you and
28 Mr. Gilmore.

29 BY MR. LUMUMBA: Well, it's a little more than

1 that. As a member of the Bar, I feel compelled to
2 try to get it back to him if I can knowing that he
3 has a responsibility to do an appeal, that he has a
4 responsibility to try two more cases at this moment;
5 you know what I'm saying.

6 **BY THE COURT:** Well, I thought y'all were going
7 to be in the other two.

8 BY MR. LUMUMBA: We haven't, that hasn't been
9 resolved, nor do I think that that is-- and even if
10 all four of us was in the case at the same time, all
11 four of us would need a copy of the material, at
12 least two copies of the material to each office.

13 **BY THE COURT:** That Motion, well, it's sustained
14 in that the State is required to deliver discovery to
15 Defense Counsel, which the Court finds at this time
16 the State represents, as does Mr. Gilmore, that has
17 been done in this case. So they have copies and, in
18 fact, Mr. Lumumba states that he is in the possession
19 of it. So I don't know that there is anything for
20 the Court to rule on. Those motions are
21 self-sustaining, I guess, so anything, I have heard
22 all I want to hear on this--

23 BY MR. LUMUMBA: --Okay, well, now I am just
24 saying--

25 **BY THE COURT:** --Let's move on.

26 BY MR. LUMUMBA: Just to make clear what I am
27 saying. I am in possession of what Mr. Gilmore gave
28 me. Now whether Mr. Gilmore has given me everything
29 he got from the State or whether the State gave him

1 everything they had, we make no representation on
2 that whatsoever.

3 **BY THE COURT:** I understand. And if you find
4 out that he has not, you let me know, and we will see
5 that you get it.

6 Okay, there is a Notice for Aggravating
7 Circumstances and for Disclosure of Evidence
8 Supporting Mitigating Circumstances. I know you did
9 it in the first case. I don't know whether y'all
10 have done it in this case or not.

11 **BY MR. EVANS:** Your Honor, we have supplied
12 notice of aggravating circumstances for all cases.

13 **BY MR. HORAN:** If we haven't, we will get that
14 out. I know we have though.

15 **BY MR. EVANS:** It's the same notice for all
16 cases.

17 **BY THE COURT:** Armed robbery? And there were
18 two; there were two as I recall.

19 **BY MR. EVANS:** Actually three.

20 **BY THE COURT:** Okay.

21 **BY MR. JOHN GILMORE:** Y'all withdrew one if I'm
22 not mistaken.

23 **BY MR. EVANS:** At trial on that case, but all of
24 them were offered as far as all cases, noticed.

25 **BY THE COURT:** Notice has been furnished in all
26 four cases?

27 **BY MR. EVANS:** Yes, sir.

28 **BY THE COURT:** Okay. That Motion is sustained.
29 The Court takes note that it has been done.

1 BY MR. LUMUMBA: We can't represent that it has
2 been done because I haven't seen it yet.

3 BY THE COURT: I understand you can't.

4 BY MR. EVANS: Can you furnish it to them, Mr.
5 Gilmore?

6 BY MR. JOHN GILMORE: It should be--

7 BY MR. HORAN: --I will do another one, Your
8 Honor. If you want me to have it out this afternoon,
9 I will do it.

10 BY THE COURT: That will be fine. You can do
11 another one. That will take care of that. But Mr.
12 Gilmore, you understand you are under an obligation
13 to furnish co-counsel or former co-counsel with
14 everything that you have got that is relevant to this
15 case.

16 BY MR. JOHN GILMORE: Yes, Your Honor.

17 BY THE COURT: Okay, the Motion for Individual
18 Sequestered Voir Dire.

19 BY MR. LUMUMBA: Judge, this is a case where
20 there will be considerable issues to be raised as to
21 publicity. My understanding here again is that you
22 had publicity on every day of this trial. The
23 citizenry in general of Lee County certainly would
24 have had no reason not to look at it. These are the
25 same people you are going to ask to come in here and
26 be jurors. Some of the publicity was probably
27 inaccurate. Some of it may have reflected what was
28 being said in court, but in any instance, it would
29 have all created circumstances where a number of

1 citizens may have prejudged the case.

2 One of the reasons you have individual
3 sequestered voir dire is so whatever one individual's
4 prejudices might be or prejudgments might be that
5 they don't contaminate the whole jury. So we think
6 that we should take each juror at a time, one at a
7 time, inquire into what they have heard and what
8 impact that would have had on them. The other thing
9 I would suggest is as to the most effective way to
10 Witherspoon the case in terms of voir dire as to who
11 would automatically give the death penalty as well as
12 to any voir dire that the State may wish to do on the
13 questioning of who could in any circumstances give
14 it, give the death penalty.

15 So this, we have questionnaires. We have
16 particular questions to ask particular jurors based
17 upon what they said in their questionnaires. So that
18 is, so for those reasons and for all the reasons
19 listed in this Motion which I had filed before the
20 Court, we would ask that there be individual
21 sequestered voir dire.

22 I might add to the Court that hundreds of
23 questions, questionnaires went out, I guess, in the
24 first trial.

25 **BY THE COURT:** They have in this trial.

26 **BY MR. LUMUMBA:** Pardon?

27 **BY THE COURT:** They have been in this trial.

28 **BY MR. LUMUMBA:** Yeah, and in the first trial I
29 think you sent out questionnaires too; is that

1 correct?

2 **BY THE COURT:** Yes, sir.

3 BY MR. LUMUMBA: Okay, and so what you have here
4 now, hundreds, plus hundreds because you have two
5 trials, times hundreds because for every person that
6 got a questionnaire, you need to multiply that by the
7 people they come into contact with and they share the
8 questionnaire with or they talk to about the case,
9 and jurors who have now served on this case or who
10 were prospectively sitting as part of the venire to
11 possibly serve on this case, they have relatives.
12 They have friends; they have people. So you have a
13 county which is pretty well saturated with
14 information and relationships to this case.

15 In order to adequately guard against that, we
16 think individual sequestered voir dire is the best
17 method. So that's why we are asking for it.

18 **BY THE COURT:** Any response?

19 BY MR. EVANS: Just that I don't think it's
20 necessary, Your Honor. We have-- both Counsel agreed
21 on a questionnaire to be sent out. That
22 questionnaire has been sent out. I don't know how
23 familiar Mr. Lumumba is with how voir dire is
24 normally proceeded with in this district, but it is
25 usually a very thorough voir dire. And I know - I
26 guess that he probably does not unless he has talked
27 with Mr. Gilmore, but the Court will usually allow
28 either side to go into specific questions if it's
29 necessary. I just don't feel it's necessary.

1 BY MR. LUMUMBA: Judge, just a brief rebuttal.
2 It hasn't, that doesn't deal with my concerns. I
3 have talked to Mr. Gilmore, and I really got more
4 concerns from the conversation rather than being
5 relieved of any concerns. But no matter how thorough
6 the voir dire, the question is of contamination.
7 That is always possible if you are talking to people
8 as a pool. It's very possible. We would like to
9 have a thorough voir dire on racial attitudes.
10 Racial attitudes are critical in this case. If we
11 are going to have a thorough voir dire on racial
12 attitudes, do we have to do it at the risk of
13 aggravating some racial attitudes that might exist or
14 aggravating some kind of animosity against us because
15 we have the nerve to raise in this country that
16 people might get convicted sometimes because of their
17 race. So, you know, is that something which we
18 should be, have to have a problem with in front of an
19 entire jury, or is that something we should be able
20 to approach people on individually.

21 Publicity. Say one person hadn't heard anything
22 about the case, or let's say somebody has heard
23 anything about the case, but they don't have a
24 negative opinion on it. See, we need to know not
25 just that they heard about something; we need to
26 know what their opinion was at the time and what
27 their opinion is now. And we might have some people
28 who are pretty persuasive about articulating their
29 opinion. We don't want to saturate and prejudice the

1 rest of the jury with pervasive presentations of
2 their opinion.

3 So I mean, you know, this-- and if the Counsel
4 has nothing more to say about it than what he just
5 said, then obviously he is really not opposed. I
6 would-- and if he says it is just not necessary and
7 we think it is necessary, then it seems to me nothing
8 is stopping the Court from doing it. The thing is,
9 is he shows no way where it is going to prejudice his
10 case, and what I suggest is that it could alleviate
11 prejudice in our case.

12 So we would ask that the Court do allow it. It
13 is allowed in many different places. I have never
14 been in this district before, but this is in the
15 State of Mississippi, and I have been in many of
16 those districts before, and they do do it. They have
17 done it in other parts of the country in federal
18 courts as well as in the state courts.

19 (Confers with Mr. Freelon briefly.)

20 BY MR. LUMUMBA: Did it in Pontotoc as a matter
21 of fact which is not far from here although a
22 distance from Montgomery County.

23 **BY THE COURT:** Okay, that Motion is overruled,
24 but I retain the right to change my mind if the facts
25 during the voir dire present a matter that provides
26 for individual sequestered voir dire.

27 All I have got left-- well, not all I have got left;
28 Motion to Bar Prosecution as a Result of Double
29 Jeopardy.

1 BY MR. LUMUMBA: Okay. The, you know, the
2 double jeopardy law basically bars as we indicated,
3 cited in our Fain v. Duff, 488 F.2d 218, Fifth
4 Circuit case. In another Fifth Circuit case, United
5 States v. Sneed, which is in accord with that
6 decision, Abney v. United States likewise, is that we
7 are inviting double jeopardy violations when we try
8 people twice for the same crime. The double
9 jeopardy, as I understand it, is when you are tried
10 for the exact set of facts either under separate
11 charges or the same charge multiple number of times.

12 My understanding, the only thing that
13 distinguishes these cases at this time is the fact
14 that tragically different people have died. Now, of
15 course, we must keep in mind as we make these
16 arguments that we don't cripple the Defendant in
17 terms of his rights one way or the other because
18 numerous people have died. The question of the trial
19 is whether or not the Defendant committed the crime,
20 and if that is not a question here, really we are
21 wasting our time. But I assume that it is a
22 question, a big question. In fact, we deny that he
23 committed any of them.

24 So I am real particular about violating his
25 rights by multiple prosecutions for the exact same
26 acts. So what we are saying to this Court is that
27 this case represents a violation of the double
28 jeopardy law. All four of those counts, in order not
29 to violate the double jeopardy law, had to be tried

1 at the same time. Here again, the District Attorney
2 in his approach to the case decided not to take that
3 approach.

4 So having failed to take that approach, what
5 they have done now at this time is put themselves in
6 a situation where they now don't have a right to try
7 any of the rest of them as far as I am concerned, but
8 certainly not the one that we are on.

9 Blockbuster is a case where they go to some
10 pains - it's a United States Supreme Court case -
11 where they go to some pains to describe the double
12 jeopardy law, and they point out that this thing
13 called transitional double jeopardy, transitional --
14 transitional means where everything is in the same
15 transition. The same transition means that when you
16 try any part of the acts for that transition, you
17 have to try all of them, or you waive your right to
18 try the others. And I think that that is clearly the
19 situation here.

20 So I would ask the Court to bar the prosecution
21 of this case based upon the double jeopardy clause in
22 both the Mississippi Constitution and the United
23 States Constitution.

24 BY MR. EVANS: Your Honor, in response, I think
25 the law is very clear in the State of Mississippi.
26 Simon is on point on this, Stringer v. State and
27 Wilcher v. State. And in Wilcher v. State, it
28 specifically says that, "In this case there are
29 actually two murder victims, the product of two

1 separate criminal actions by Wilcher. Even though
2 the same facts surround the murder of each victim,
3 there are undeniably two victims and two counts of
4 capital murder arising from Wilcher's actions.
5 Therefore the same elements test does not apply."
6 And in Simon there were numerous cases tried
7 separately. Every case that I have seen in the State
8 of Mississippi says that it is proper to try them
9 separately. It's a call that the district attorney
10 has to make whether to try them together or
11 separately, and in this case I elected to try them
12 separately, and the law supports that.

13 **BY THE COURT:** That Motion is overruled.

14 BY MR. LUMUMBA: Judge, this relates to this
15 Motion, and you also denied the Motion to Recuse, and
16 you denied the Motion, (Confers with Mr. Freelon)
17 Motion for a Speedy Trial. You denied all three of
18 those. As to all three of those, we are requesting,
19 I think you already denied it as to the Motion to
20 Recuse, but as to the other two, we are requesting
21 that you certify this for interlocutory appeal to the
22 Supreme Court.

23 **BY THE COURT:** Okay, you need to file a formal
24 written motion stating what you want in that, and
25 then I will make a ruling on it.

26 BY MR. LUMUMBA: All right. We would also be
27 filing a motion asking for a stay of trial pending
28 the resolution of those three motions.

29 **BY THE COURT:** Which you will get if I grant

1 the, if I certify it.

2 BY MR. JOHN GILMORE: Your Honor, I have a
3 motion. This case that y'all are here today for is
4 CR97-372. After conferring with the Defendant, he
5 has indicated to me in the presence of his current
6 Counsel in this case that he wishes for me to
7 withdraw, and I am making a motion to withdraw on the
8 other two cases, CR97-370 and 371, which are the two
9 remaining, the two remaining cases that I am and my
10 father is counsel of record. I am making a motion to
11 withdraw as representation on behalf of myself and my
12 father from the other cases.

13 BY THE COURT: Okay. You will need to do that
14 by formal motion.

15 BY MR. JOHN GILMORE: Yes, Your Honor.

16 BY MR. LUMUMBA: Let me--

17 BY MR. EVANS: --Your Honor, just for the record
18 on that motion, we would object for the reasons that
19 we have stated earlier, but more specifically for the
20 reason that Mr. Lumumba has told the Court is my
21 understanding a few minutes ago that he was not
22 announcing to the Court that they were representing
23 him on the other two causes.

24 BY THE COURT: Right, and that has got to be
25 resolved. He is either going to have to have, one of
26 y'all is going to have to represent him, or he is
27 going to have to proceed pro se, one or the other.
28 So y'all can resolve that. You have got time to file
29 your motions. When we get ready to have a hearing,

1 y'all can work all that out. That is between the
2 lawyers. Let's see; we have got to have--

3 BY MR. LUMUMBA: --Judge, excuse me. I want to
4 represent I don't think it is just between the
5 lawyers. It is between the Defendant, the state, the
6 lawyers, the Court, and the Constitution.

7 BY THE COURT: Not until it's filed and there is
8 nothing filed in this case on that.

9 BY MR. LUMUMBA: Okay, right. Well, that may be
10 but anyway--

11 BY THE COURT: Now. I'm going to go get a copy
12 of my calendar faxed to me and check this 22nd date
13 out, and then I think we have got a couple of other
14 matters to go. We will take a break.

15 (FOLLOWING AN AFTERNOON RECESS ON 1/5/98, MOTION
16 PROCEEDINGS CONTINUED WITH ALL COUNSEL PRESENT IN
17 OPEN COURT AS FOLLOWS:)

18 BY MR. EVANS: Judge, on the 22nd that you were
19 looking at, we have, and it looks like that one of
20 them is going to be a case that is definitely going.
21 We have got a case set for trial in Grenada. We have
22 got two cases, I think, set for trial in Webster.
23 They may or may not go, and we have also got a
24 recalled grand jury scheduled that day. So it would
25 be extremely hard to be at the motion hearing on the
26 22nd.

27 BY THE COURT: The two in Webster County don't
28 bother me. I will move them. The 20th is open in
29 Webster, so I can move them.

1 BY MR. EVANS: The 20th would be fine with us.

2 BY THE COURT: No, they have got a trial
3 conflict.

4 BY MR. EVANS: The 29th-- I mean not the 29th;
5 the 23rd we don't have anything if that is
6 available.

7 BY MR. LUMUMBA: The 23rd, I have got-- Your
8 Honor, I said at the very beginning I have something
9 on that day already for trial.

10 BY MR. EVANS: How about the 13th?

11 BY MR. LUMUMBA: When is that, tomorrow?

12 BY MR. EVANS: No.

13 BY THE COURT: I hope not.

14 BY MR. LUMUMBA: We have an arbitration hearing
15 on that day before the Court. Let me make a
16 suggestion here. Since we have these conflicts, can
17 we-- I would say schedule this for the 26th itself or
18 the 27th. This case is scheduled for that day, and
19 one of our motions that we will-- I would say
20 schedule it for the 26th or the 27th. Of course, you
21 know, our motion is, you know, to have the hearings
22 and we will be filing-- we thought we had already
23 filed, but we will be filing a motion to continue the
24 trial date also. But having that, with whatever, we
25 will be willing to argue it. I can argue it orally
26 right now if the Court wants me to, but certainly I
27 think it needs to be continued.

28 I am just looking at the jury questionnaire that
29 was sent out. As far as I can see, that

1 questionnaire is inadequate for this case. It was
2 adequate for the first case, but the reason it is
3 inadequate for this case it doesn't ask key
4 questions. Number one, Have you heard of the case?
5 This is a case that has been tried up here before.
6 Those are those kinds of things which need to be
7 asked so you can pre-screen, you know, come in
8 prepared to ask jurors questions.

9 But there is any number of things that need to
10 be done, and I would say I don't understand what, you
11 know-- if the client, there is a rush if the client
12 is saying that he doesn't, that he is going to demand
13 us to go to trial on the 26th or the 27th, but since
14 he has already complained about that date and he is
15 complaining about it quite frankly because he feels
16 that all of these cases should have been together,
17 and you violated his 270 day rights when you
18 separated them.

19 But other than that, he has no complaints about
20 the date as far as this upcoming trial is concerned,
21 whichever one it will be, and so I think we should do
22 it right, the 26th, 27th, 28th, rather than to rush
23 through it and put one in the position where they
24 will be retrying this case for twenty years. The
25 case I had in Pontotoc was a case just like that. I
26 tried the case twenty years after it had been decided
27 the first time in 1976. And I think that, you know,
28 we might create that same situation here if we are
29 not careful.

1 BY MR. EVANS: I have gotten lost again. I
2 thought all we were trying to do is pick a date to
3 the hear the motion.

4 BY THE COURT: By that time, Mr. Lumumba, you
5 will probably have a different guy sitting up here,
6 and you can get your motion sustained.

7 BY MR. LUMUMBA: Well, probably will take a
8 different, you know, I may not be around myself, but
9 those things happen.

10 BY THE COURT: I understand.

11 BY MR. LUMUMBA: But the point is yeah, we are
12 talking about a date. That's why I said if people
13 pay very close attention to everything that is said,
14 and one thing--

15 BY MR. EVANS: --This is fixing to get out of
16 hand, Your Honor, real quick--

17 BY MR. LUMUMBA: --the 26th, the 27th is the day
18 that I'm recommending, and I don't know if anybody is
19 trying to intimidate anybody, talking about something
20 is getting out of hand, but certainly that don't work
21 here.

22 BY THE COURT: Well, I mean most everybody here
23 knows me, that that is not going to happen.

24 BY MR. LUMUMBA: Okay. That is good. That is
25 good.

26 BY MR. EVANS: Your Honor, before I was
27 interrupted, I was trying to offer some dates that
28 the State can be available. We can be available the
29 13th; we can be available the 14th; we can be

1 available the 15th; we can be available the 19th; we
2 can be available the 20th; we can be available the
3 21st; and we can be available the 23rd.

4 BY MR. LUMUMBA: Those are dates which don't
5 work for us. The dates, we have indicated those
6 dates that work for us. We went through this
7 calendar, and we thought we had a date for the 22nd,
8 but apparently that doesn't work. So those are dates
9 which do not work.

10 BY THE COURT: Okay, do you have cases set on
11 those days?

12 BY MR. LUMUMBA: Yes, Judge. I have on the 23rd
13 is a murder case, on the--

14 BY THE COURT: --I mean I just want-- you have
15 actual court cases set on those dates he just gave
16 you?

17 BY MR. LUMUMBA: Yeah, yeah, on the dates he
18 just gave us; that is true.

19 BY MR. EVANS: Your Honor, out of accommodation
20 if the State, if the Court feels that these motions
21 need to be disposed of before the trial starts--

22 BY THE COURT: They have to be. I'm not going
23 to do it on the day of trial.

24 BY MR. EVANS: --then I won't be like opposing
25 counsel. I will be available the 22nd regardless of
26 the fact that I have court in three different
27 counties that day. But if I'm going to have to be
28 here at a time that I have got court set in three
29 places, I would like to see a calendar showing what

1 cases are set on the about eight different dates that
2 I offered.

3 **BY THE COURT:** I'm going to set them for the
4 22nd. Monday, I will move those other cases in
5 Webster County. I will move them back to Tuesday or
6 to some other date. And we will have this hearing in
7 Attala, and since we are going to be, 9 o'clock,
8 since we have got, we will have plenty to do.

9 **BY MR. HORAN:** Do you want the State to do the
10 writ, Your Honor?

11 **BY THE COURT:** Yes, I would appreciate it. Now
12 what I have set - correct me if I am wrong - we have
13 got set a motion concerning the experts, appointment
14 of experts.

15 **BY MR. LUMUMBA:** I'm sorry, Judge?

16 **BY THE COURT:** I want you to help me. I want
17 you to make sure we have got, we know what we are
18 going to do that day; okay?

19 **BY MR. LUMUMBA:** Okay. I take it that we are
20 going to have a motion to, we are going to have our
21 proofs. We intend to endeavor to subpoena the two
22 jailhouse snitches for an evidentiary hearing on that
23 day. We will be, also we intend to give you
24 additional proofs on the change of venue on that
25 day.

26 **BY THE COURT:** Okay.

27 **BY MR. EVANS:** Your Honor, that motion will need
28 to be heard here.

29 **BY THE COURT:** Yeah, if you are going to offer

1 evidence, they have -- if the motion gets filed
2 properly, pursuant to statute--

3 BY MR. LUMUMBA: Okay.

4 BY THE COURT: --then that is going to create a
5 rebuttable presumption for them, and they have, they
6 are going to have to put on evidence to rebut that
7 presumption. So that of necessity, that motion has
8 to be heard here.

9 BY MR. LUMUMBA: Well, not necessarily. I mean
10 they can have people leave this jurisdiction.

11 BY THE COURT: Well, from this Court's
12 standpoint, it has got to be heard here.

13 BY MR. LUMUMBA: All right, well, I just wanted
14 to make clear for the record for our point for the
15 record it doesn't have to be heard here.

16 BY THE COURT: I understand.

17 BY MR. LUMUMBA: But in any event, those are
18 motions which we intend to file. And whenever you
19 want to set them to be heard; now I have recommended
20 the 26th and 27th to hear them. We are going to file
21 a motion to continue the trial date. There is no
22 question about that. We thought we had already filed
23 one. One of the reasons, we are going to file a
24 motion to bar prosecution, I mean bar the
25 introduction of aggravating circumstances, whichever
26 are the ones that they claim that they are offering.
27 I still haven't seen them yet. But whatever they
28 are, we always do that, and we are going to do it
29 this time.

1 And let me see; is there anything else? We
2 have, we will present -- I don't know if this
3 requires a hearing, but if it requires a hearing, we
4 are going to ask the Court for-- of course, the
5 expert issue, yeah, the Court wanted to hear the
6 expert issue, and we are asking to do it ex parte,
7 but the Court can make a decision on that. And the
8 other thing is the orders and motions that I
9 indicated that we would present which are related to
10 these motions that have already been decided, like
11 the Motion for a Certification for Interlocutory
12 Appeal, Motion to Stay the Proceedings. We will
13 present the Court with all of those. We can have,
14 and so those will be available to be heard on that
15 day.

16 Actually, to be honest with you, if the Court is
17 denying our motions which it already has, we would
18 ask for the Court to sign orders on those right away
19 because we want to get working on the interlocutory
20 appeal. Even if you deny to certify it, the Court
21 is, of course, aware that we can still ask the Court
22 to hear it. And if they decide to hear it, then they
23 can also grant a stay on their own accord.

24 So we would want as prompt a signing of an order
25 on that as possible. And as I understand it reading
26 the Beckwith case, any issue and double jeopardy is
27 definitely one of them, which in the denying of the
28 motion itself, if the going to trial itself would
29 suffer the kind of prejudice that the defendant was

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

ISK
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1 trying to avoid by making the motion, then that
2 defendant is entitled to a hearing by the Supreme
3 Court. That is what Beckwith decided on the double
4 jeopardy issue; that's why they got a hearing on
5 that.

6 **BY THE COURT:** I think you may have some merit
7 in that on the question of double jeopardy. You need
8 to get-- I would appreciate it very much if you would
9 get your motion together asking me what you want me
10 to certify as quick to me as possible so that I can
11 be looking at that particular case and the law. I
12 may give you a ruling on that before the 22nd.

13 BY MR. LUMUMBA: Okay.

14 **BY THE COURT:** Okay? I mean I am going to be
15 dependent on you now to be prompt; okay?

16 BY MR. LUMUMBA: Well, yeah, Judge. I would
17 hate for the inference to be that we haven't been
18 prompt--

19 **BY THE COURT:** --Well, no, I didn't mean that to
20 infer that.

21 BY MR. LUMUMBA: Okay. So we will get it, we
22 will get it to you right away.

23 BY MR. JOHN GILMORE: Your Honor, I also intend
24 on presenting my motion to withdraw on the other two
25 cases as well on that day.

26 **BY THE COURT:** Okay. Well, do y'all want to
27 meet at 7 o'clock? (Laughter).

28 BY MR. LUMUMBA: I'm sorry?

29 **BY THE COURT:** I said y'all want to meet at 7

1 o'clock; it looks like we are going to have plenty to
2 do.

3 BY MR. LUMUMBA: Okay, let me just say here.
4 The other thing we are going to be making a motion
5 for an additional jury questionnaire going to some of
6 the issues I just raised. Those are the motions we
7 are aware of.

8 BY MR. EVANS: Your Honor, it is going to be in
9 this county since we are going to do the change of
10 venue part too; is that right?

11 BY THE COURT: If we are going to have to do
12 change of venue, we are going, it is of necessity got
13 to be here.

14 BY MR. EVANS: So it will be at 9 o'clock here?

15 BY MR. FREELON: Say 10:00, Judge, please.

16 BY THE COURT: Well, I can't do it at 10:00.
17 Y'all have got too much for me to do in one day. I
18 may have to come early too. I realize how far it
19 is. I appreciate that, but if you are going to have
20 an evidentiary hearing on the Motion for Change of
21 Venue, that might take most of the day.

22 BY MR. LUMUMBA: Okay.

23 BY THE COURT: I need for y'all to do something
24 else if you will. When you come on that day, since
25 you will have that motion for change of venue, you
26 should bring your personal docket with you -- I mean
27 your motion for continuance, so that I will have--
28 if, in fact, that happens to be what the ruling is of
29 the Court, that I have available dates that we can

1 compare with available dates here or wherever this
2 case were to be tried. All right?

3 BY MR. LUMUMBA: Very good, Judge. That won't
4 be a problem.

5 BY THE COURT: Okay. Anything else for today?

6 BY MR. LUMUMBA: Judge, let me just make this
7 clear for the record. And I think this is an
8 important thing to make. Now what we are actually
9 requesting - and I understand what we have just done
10 in terms of the 22nd. I basically told you the 22nd
11 was a day we were available, and that remains true.
12 However, the import of our motion or what we feel
13 that these motions should be set and heard at a date
14 more distant than the 22nd because we feel it would
15 give us more time to thoroughly explore the venue
16 issue and things of that nature and get affidavits.
17 We think that that is the process. Really, you can
18 do what you call it, polls and really in this kind of
19 situation is really what ought to be done, and that
20 would take about another 30 days.

21 So what we are really requesting is a date far
22 beyond the date which is set. Now if you are denying
23 that, then our alternative which we, you know, which
24 we told you we were available for the 22nd. We will
25 come on the 22nd. But just for the record our motion
26 is to have it at a distant date in either January,
27 late January, early February or in March. That's our
28 motion. That's what we are trying to do. We think
29 that this date is too early. But if the Judge is

1 denying that, then we have already shared with you
2 what our docket will allow.

3 **BY THE COURT:** Okay. See y'all the 22nd.

4 (The Court confers with the Court Reporter.)

5 **BY THE COURT:** Better hold on. I don't know if
6 I have got a courtroom for that.

7 (THE COURT LEFT THE COURTROOM AND THEN CALLED
8 COUNSEL INTO CHAMBERS. THERE WAS THEN THE FOLLOWING
9 FURTHER HEARING IN CHAMBERS WITH THE DEFENDANT
10 PRESENT AND WITH ALL COUNSEL PRESENT EXCEPT MR.
11 HORAN:)

12 **BY THE COURT:** Y'all are going to have a motion
13 for additional questionnaires? Is that one of them?

14 **BY MR. LUMUMBA:** Yes, additional questions,
15 yeah.

16 **BY THE COURT:** What would those questions be?

17 **BY MR. LUMUMBA:** They are going to have to do
18 with an inquiry around whether or not the jurors have
19 heard of this case, whether they are related to, not
20 knowingly related to anybody who was called as a
21 juror in this case, either summonsed to appear in the
22 pool or whether they actually served. And those are
23 the two areas that stand out starkly in my mind. The
24 first time I saw the questionnaire that was sent out
25 in this case was today when John, I think the first
26 time he had a chance to give us any return
27 questionnaires was today. So when I saw that, those
28 things stand out in my mind. I don't think those
29 kinds of questions necessarily needed to have been

1 asked before the first trial, but they clearly need
2 to be asked before this trial as far as I am
3 concerned. And I'm not saying that is all the
4 additional ones. We are going to study it, but I
5 know those two things stand out in my mind.

6 BY MR. FREELON: They actually go to the change
7 of venue.

8 BY MR. LUMUMBA: Well, they could have an effect
9 on the change of venue itself, but certainly they
10 have an impact on these jurors in terms of what their
11 problems are.

12 BY MR. EVANS: It could definitely have an
13 impact on change of venue if they were allowed to
14 taint the jury panel by letting them know that this
15 case has been tried here before. I think any
16 questions about trial, whether it's the State
17 offering them or the Defense, would be improper.

18 BY MR. LUMUMBA: So you are going to say that
19 when we ultimately voir dire the jury, we can't ask
20 that question?

21 BY MR. EVANS: In our opinion--

22 BY THE COURT: --Well, here is--

23 BY MR. LUMUMBA: --That would be impossible.

24 (Knock on the door; Mr. Horan enters chambers.)

25 BY MR. EVANS: Questionnaires are not necessary
26 to start with. We agreed on one in this particular
27 case.

28 BY MR. LUMUMBA: Yeah, but Judge, one of the, as
29 the motions which go for a continuance, one of the

1 main issues - well, I don't know whether it's one of
2 the main - a main issue; I don't know if it's, where
3 it ranks, but attenuation of possible prejudice and
4 time for possible prejudice to attenuate. The man
5 has just been convicted and sentenced to death in
6 this county. There couldn't be anything more
7 prejudicial than that if you have jurors who know
8 about it. There is no way in the world you cannot
9 ask that question. You can't take a chance that the
10 jurors sitting out there are aware of this man's
11 being found guilty--

12 **BY THE COURT:** --Well, I may not be able to ask
13 it. He may not be able to ask it. You probably can.

14 **BY MR. LUMUMBA:** Yeah, but I understand you save
15 yourselves a whole lot of trouble by sending it out
16 on the questionnaire; and secondly, to find out in
17 advance what we are dealing with here. One of the
18 reasons why you continue cases so you can change the
19 venue, which I think needs to happen here, or you can
20 continue the case to attenuate the publicity. But we
21 have the worst of both worlds here. I mean we have
22 got huge panels that you are drawing. I mean I say
23 huge; probably huge relative towards what is normally
24 drawn in this county, okay, affecting a whole lot of
25 people. If it is anything like the case we tried in
26 Pontotoc, it is going to be a problem.

27 **BY THE COURT:** Well, of course, this is a lot
28 bigger county than Pontotoc.

29 **BY MR. LUMUMBA:** Yeah, that is true but it was

1 amazing what. (Pause) Your Honor, you know, the DA,
2 look; I am sitting here; I am being made to feel like
3 I am imposing on somebody. Here is a man sitting
4 here that has already got one death sentence this
5 year. He can't say well, look, I don't mind going
6 back to Montgomery County or changing the county or
7 continuing the case for a while to make sure this man
8 is not caught in the prejudice of the most recent
9 death penalty? I mean what is the problem here?

10 BY MR. EVANS: If he is going to make personal
11 comments--

12 BY THE COURT: --No, wait a minute, wait a
13 minute. Here is the Court's problem that I have got
14 right now. This case is set for the 26th; it's the
15 5th. The earliest we can hear these motions, whether
16 they have got any merit or not, the earliest we can
17 hear them is the 22nd. And I know I am beating my
18 head against the wall. Even though the Motion is not
19 filed, I'm going to have to give him a continuance.
20 I know that. I'm going to give it.

21 BY MR. EVANS: Your Honor, if the Court is
22 considering giving a continuance, we would ask to
23 move that motion date.

24 BY THE COURT: We will. We won't-- what we will
25 do is I'm not going to sign any order until we can,
26 until you get your motion filed and I take note that
27 you have filed it. And then we are going to have a
28 -- what I'm going to do is I'm going to do just like
29 we did in the first case. I'm going to set motion

1 deadlines, and I'm going to set time for all
2 discovery to be through, and we are going to pick a
3 date, and that is the one we are going to try to, one
4 that will be agreeable to everybody. And when we get
5 there, that is it. That is the day we are trying it.

6 BY MR. LUMUMBA: I am a hundred percent with
7 that. You will find out that we work well under
8 those circumstances.

9 BY THE COURT: Okay, now the only problem I have
10 with some of that is he has got to be present every
11 time we do that, so we are going to have to sit down,
12 sit down together and set those deadlines. We are
13 not going to take a year to try this now, you
14 understand.

15 BY MR. LUMUMBA: No, sir.

16 BY MR. FREELON: We understand that.

17 BY THE COURT: Since I am going to do that, why
18 don't we sit down on the 26th of January and set
19 those things?

20 BY MR. LUMUMBA: All right.

21 BY THE COURT: And we can do that, no reason we
22 can't do that in Attala County, and we can do that at
23 10 o'clock. Now I think you have only asked for one
24 evidentiary hearing other than the change of venue.
25 When we get to that point, I'm going to have to do
26 that up here. So we are not going to do that on the
27 26th, but these other motions and all like that I
28 expect y'all to have your witnesses there to testify
29 that you want to testify.

1 BY MR. LUMUMBA: All right. We will do it.

2 BY MR. HORAN: Your Honor, would it be asking
3 too much that they give us a notice of hearing and
4 list the motions that they are actually going to
5 bring up on that day?

6 BY THE COURT: Yeah, since we are going to give
7 the continuance, y'all do that. The first thing I'm
8 going to hear that day is this question of
9 interlocutory appeal. That may make moot whatever I
10 have said here today.

11 BY MR. LUMUMBA: We will give them notice of
12 hearing on the motions, and we will be prepared, we
13 will file the motion for interlocutory-- well, for
14 you is a motion for certification.

15 BY THE COURT: Right.

16 BY MR. LUMUMBA: We will file it.

17 BY THE COURT: Okay. Let's work on that
18 schedule.

19 HEARING OF 1/5/98 CONCLUDED

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1 (COURT HAVING BEEN DULY OPENED IN KOSCIUSKO,
2 MISSISSIPPI, ON JANUARY 26, 1998, AT APPROXIMATELY 10:00 A.M.,
3 MOTION PROCEEDINGS WERE HEARD IN CAUSE NUMBER CR97-372 IN THE
4 CIRCUIT COURT OF LEE COUNTY, MISSISSIPPI, WITH COUNSEL PRESENT
5 AS FOLLOWS: REPRESENTING THE STATE, HONORABLE DOUG EVANS AND
6 HONORABLE KEVIN HORAN; REPRESENTING THE DEFENDANT, HONORABLE
7 CHOKWE LUMUMBA AND WITH THE DEFENDANT ALSO PRESENT.
8 PROCEEDINGS WERE AS FOLLOWS, TO-WIT:)

9 BY THE COURT: Mr. Lumumba, what have you got
10 first?

11 BY MR. LUMUMBA: Okay, Judge, I wanted to first,
12 I would like to deal with an issue which I think is
13 still somewhat unresolved. I think I know which way
14 the Court was leaning, but the Motion to Dismiss for
15 Violation of Defendant's Speedy Trial Rights under
16 the Mississippi Law. In looking at the motion we
17 filed and argued before the Court the last time,
18 actually -- and the Court correctly directed its
19 order to the Motion that we wrote, okay, and that was
20 a motion under the speedy trial rights under the
21 United States Constitution. In fact, it listed the
22 constitutional provisions, and it argued the
23 constitutional law. Mississippi law is the law where
24 we have the 270 day rule. The United States
25 government or United States federal law, Federal
26 Constitution doesn't have a particular rule.

27 So I have specifically directed a motion to
28 that, okay. Actually, you know, I did make comments
29 in reference to the situation the last time I was

1 here. But this specific motion is going to that, and
2 so what, so my motion therefore is under the
3 Mississippi Constitution, Mississippi Statute, which
4 is 99-17-1, that this case should be dismissed. I
5 feel that the Defendant's speedy trial rights have
6 been violated.

7 I cited for the Court in my motion a case called
8 Herring v. State, which is located 691 So.2d 948.
9 It's a 1997 case actually. I didn't realize it was
10 that recent, but the Herring v. State case
11 essentially says that it's-- where the Defendant does
12 not have to call upon the State or the Court to try
13 him. The Defendant has no obligation to bring
14 himself to trial. No prejudice need be shown under
15 the violation of the statute in order for the case to
16 be dismissed. The Defendant doesn't have to show any
17 prejudice other than the fact that you went beyond
18 270 days.

19 What is required and it's the burden; they make
20 it very clear that the burden is on the State to
21 demonstrate that somehow the Defendant contributed to
22 the delay, or if the Defendant didn't contribute to
23 the delay, the delay was for good cause, which allows
24 the State therefore to take advantage of the good
25 cause delay. So it's like a good cause delay, and
26 there is a defense caused delay.

27 In this case the Defense has caused no delays up
28 until the 26th of January. We did ask for a
29 continuance from the 26th of January. So all the

1 time that goes up to the 26th of January will be a
2 credit to us. We, the Defense, never argued a motion
3 to continue the trial prior to January the 5th; I
4 think that was when we were here the last time or
5 when we were in Lee County. Okay, and that was
6 already beyond the 270 day limit.

7 The 270 day limit began to run on March the
8 25th, so it exhausted in December, right. This case
9 could have been tried conceivably any time prior to
10 December, and it would have met the 270 day rule. I
11 think, I did read the Court's order carefully, and I
12 appreciate the Court laying out its recollection of
13 the events which led up to the present trial date,
14 or up to the 26th trial date in any event.

15 One thing that would be important to point out
16 to the Court is that the Court does not in its order
17 which it gave us on the federal statute, does not
18 speak to the issue of the prosecution's deliberate
19 indictment of this case in four separate
20 indictments. In fact, the cases discuss that. The
21 cases point out that the, that the statutes now
22 permit the prosecution, the State to place all of
23 these counts in one indictment. Okay, so when the
24 prosecution makes a deliberate choice for whatever
25 strategical or tactical purposes they might choose to
26 try the case in four separate trials, when they don't
27 seek an indictment in front of the Grand Jury -- now
28 it's their burden if they did seek an indictment and
29 the Grand Jury turned them down for a joint

1 indictment, then that is their burden to show us some
2 transcript which convinces the Court of that,
3 convinces me of that, or at least gives me some
4 notice so I can argue it.

5 But when they made that choice, they, they were
6 at that time participating in a strategical and a
7 tactical move which inevitably was going to cause a
8 violation of the statute and the Defendant's speedy
9 trial rights under the Mississippi statute. They
10 don't have that luxury. If they want to make
11 tactical moves, that is fine. But if they are going
12 to make tactical moves, they have to make these moves
13 within the context of the limits that the statute
14 prescribes.

15 The other thing about the Motion which was made
16 by prior, predecessor counsel to change of venue,
17 there is no indication in the record whatsoever that
18 that Motion in any way caused any delay period. The
19 first trial date which was set for this case was set
20 well within the limits of the 270 day rule. If the
21 State would have chosen to try the trials
22 collectively, then they would have had an opportunity
23 to try all the cases within the 270 day rule because
24 they could have tried them all together. So that in
25 no way prejudiced the case, ability to try these
26 cases within the 270 days.

27 Moreover, moreover, as far as this case which is
28 the second case, it still, you know, as far as the
29 record shows, it still could have been tried

1 immediately after the last trial. It could have been
2 tried in November, or it could have been tried in
3 December. I mean and those things would have been
4 within the rule.

5 Now, and the cases make it clear if the record
6 is silent, then it speaks for the Defendant. Until
7 the record or if the DA anticipated, saw some
8 problems with the Motion for Change of Venue, if that
9 in some way prejudiced anything or caused any delay,
10 then it was at that time that that should have been
11 put on the record. But there is no indication
12 looking at this record that there was any trial
13 contemplated prior to the time it was actually set,
14 which was set on October the 13th in this particular
15 case.

16 So I think, Judge, that, and let me point this
17 out. In this case we even, we have the situation
18 which I think is different from the case that the
19 Court talks about that I think Judge, the colleague
20 Judge or colleague Your Honor in this particular
21 circuit or in your circuit, dealt with, and that was
22 a case where he combined two cases. I would like,
23 you know, I would like to have a little more
24 information on that case. You know, of course, I
25 haven't read it, but I would venture to say, having
26 read the law fairly extensively on this question, he
27 was either confronted with a situation where he made
28 a consolidation over the objection of somebody or
29 over the objection specifically of the defendant, or

1 he was confronted with a situation whereby he was
2 dealing with cases which did not have the same cortex
3 or same transaction effects.

4 But in this situation where the robbery is
5 identical, there certainly is no injunction from the
6 Supreme Court or the Court of Appeals as far as this
7 Court consolidating these cases. The motion was made
8 to consolidate the cases, and the motion was denied
9 by the Court. The cases-- and more importantly, or
10 at least as important as the fact that the Court
11 denied the motion was the fact that the District
12 Attorney opposed the motion. See, their obligation
13 is to get the Defendant to trial. The Defendant is
14 making efforts-- when the Defendant moves to
15 consolidate, that is tantamount to a demand for
16 speedy trial on the three cases which are pending
17 other than the one case which is already set for
18 trial. That is tantamount to a demand for speedy
19 trial right there.

20 When the District Attorney opposes that motion
21 -- and if he didn't oppose the motions, then it
22 would create no problems for the Court to consolidate
23 the cases -- then, in fact, he is making a statement
24 which puts him into jeopardy as far as the 270 day
25 rule is concerned. And plus, the 270 day rule, I
26 guess, runs not only against the District Attorney;
27 it, in fact, runs against the Court if the Court does
28 not bring the case speedily to trial.

29 (NOTE: Mr. John Gilmore and Mr. Billy Gilmore

1 enter the courtroom.)

2 BY MR. LUMUMBA: It runs for the Defendant
3 period against whoever may be the party of interest
4 other than the Defendant. So those are the points
5 that I would like to make in this case, and then my
6 next-- I will rest here on those arguments which are
7 well laid out, not only in our Motion to Dismiss for
8 Violation of the Defendant's Rights under MCA
9 99-17-1, but I would also say that these arguments
10 are laid out in my Motion for Certification of the
11 Issue to the Supreme Court, the Court's denial of my
12 double jeopardy challenge as well as my speedy trial
13 challenge.

14 And let me say this: If there is any questions,
15 and I think that we have a pretty good transcript
16 here about what actually happened that related to the
17 speedy trial issue that we are raising, but if there
18 is any question about it, we certainly have two
19 gentlemen here who I would be more than willing to
20 put on the stand as an offer of proof to prove
21 everything I have said about the way that these
22 circumstances transpired as far as the filing for
23 Motion to Consolidate the cases, etc. which I think
24 would make the record perfectly clear.

25 In fact, I will ask the Court for the
26 opportunity to do so. If the Court feels it doesn't
27 need it because there is no real contention about the
28 facts, then I could see the Court denying that
29 opportunity.

1 **BY THE COURT:** Excuse me one minute. Is that
2 transcript that you have there, is that the one from
3 the last hearing we had?

4 BY MR. LUMUMBA: Yes, sir. Okay, the other
5 thing I should point out, Judge, is this: that there
6 was a motion made by the, uh, motion made by the
7 Defense for a speedy trial in this case. Now it's
8 unclear to me because it's unclear to me at what
9 point the case was consolidated and when it wasn't
10 consolidated. Okay, I mean I don't know that yet. I
11 mean that could be established by further testimony.
12 But I believe that Motion for Speedy Trial went to
13 all four cases, but there is a Motion for Speedy
14 Trial which I find in our records, and I haven't had
15 a chance to get up to Tupelo--

16 **BY THE COURT:** --It is. It's in all cases.

17 BY MR. LUMUMBA: It's in all cases.

18 **BY THE COURT:** Yes, sir.

19 BY MR. LUMUMBA: Okay, he made a Motion for
20 Speedy Trial. So, you know, given that reality, I
21 cannot see how we can look beyond this lapse of
22 time. We certainly can't just create reasons to
23 deprive the Defendant of his rights. This is, and
24 let me say and this is kind of like presaging my
25 presentation on the Motion for Certification. This
26 certainly, if nothing else, this is an issue which
27 needs to be decided or discussed by the appellate
28 courts because certainly, certainly, this is a case,
29 if anything, it would be a case of first impression

1 if we are not entitled to our rights. There is no
2 way that I can read the law to say that a DA can make
3 a tactical decision thereby creating a situation
4 which almost automatically means that this
5 Defendant's speedy trial rights are going to be
6 violated as it relates to three cases.

7 And certainly, you know, and so I can't, I don't
8 see any other way to look at it. You know, you have
9 the Defense never opposing the Motion to Consolidate
10 that the prosecution made, offering to consolidate
11 it, moving to consolidate on another occasion, and
12 finally, actually moving for a speedy trial in all
13 four cases. The Defense could have done no more.

14 **BY THE COURT:** Mr. Lumumba, would you like to
15 put the Gilmores on for the record?

16 BY MR. LUMUMBA: Yes, sir. Excuse me one
17 second. Can I have a second?

18 **BY THE COURT:** Yes, sir.

19 (Mr. Lumumba and both Mr. Gilmores leave the
20 courtroom, and upon their return, there was the
21 following:)

22 BY MR. LUMUMBA: Judge, yes, I would like to put
23 on Mr. John Gilmore.

24 **BY THE COURT:** All right.

25 **JOHN M. GILMORE,**
26 upon being called to testify as a witness on Defendant's Motion
27 to Dismiss for Violation of Speedy Trial Rights, having first
28 been sworn by the Court, testified as follows, to-wit:

29 **BY THE COURT:** Mr. Gilmore, have a seat up

1 here.

2 DIRECT EXAMINATION BY MR. LUMUMBA:

3 Q. Sir, could you state your name for the record,
4 please?

5 A. Yes. My name is John M. Gilmore. G I L M O R E.

6 Q. Okay, how are you employed?

7 A. I am an attorney.

8 Q. Okay, and are you an attorney who has previously been
9 associated in this case with the Defendant who sits next to me,
10 Curtis Flowers?

11 A. Yes.

12 Q. And if you could, Attorney Gilmore, the purpose of
13 this hearing is to address the issue of speedy trial and
14 various different filings of indictments and motions for speedy
15 trial and things of that nature. Would you have been in a
16 position to be familiar with the pleadings which were filed in
17 your, in this client's behalf, Curtis Flowers, up until the
18 early part of January of 1996-- 1998, excuse me?

19 A. Yes. I was the one who prepared most, if not all, of
20 the motions before you took over the case.

21 Q. Okay, were you in a position to be familiar with the
22 hearings which occurred relative to this case prior to your
23 time of not being associated as counsel in this case?

24 A. Yes, sir. I have been present at all hearings.

25 Q. Okay, and--

26 BY MR. EVANS: Your Honor, I object. I would
27 like to state an objection into the record at this
28 point if I may.

29 BY THE COURT: All right.

1 BY MR. EVANS: I would like for it to be clear
2 at this point that this witness is still representing
3 the Defendant on two of these cause numbers. He has
4 not been relieved. I would just like for the record
5 to be clear on that.

6 BY THE COURT: Okay. Go ahead.

7 BY MR. LUMUMBA:

8 Q. Is it also true that you actually were in a position
9 to be familiar with and aware of all the motions which were
10 filed by the parties opposite of the Defendant, by the State
11 itself?

12 A. Yes.

13 Q. Okay, could you tell me, please, how this case first
14 came before the bar as it related to the charges? Were there
15 one indictment, multiple indictments, or what? Could you
16 explain?

17 A. There were four separate indictments.

18 Q. Okay, and were the indictments, were the crimes
19 charged from different periods of time, different days,
20 different transactions, or could you explain that?

21 A. All four indictments were, all the indictments were
22 the same day, from the same transaction or occurrence. The
23 only difference in the indictments were the different victims.

24 Q. Okay. Did anything happen subsequent to the
25 indictment with regards to any motions for consolidation of the
26 indictments?

27 A. On one occasion the DA talked with me about
28 consolidating this case with the one that has already been
29 tried, which would be Bertha Tardy's case, and this one being

1 Derrick Stewart's case.

2 Q. Now this case just for the record would be 97-372 as
3 far as the Lee County designation is concerned?

4 A. That's correct.

5 Q. Okay. And the case that has been tried, that would
6 be have 97-369?

7 A. That's correct.

8 Q. Okay. Did you at any point in time oppose any motion
9 to consolidate these cases?

10 A. I believe I entered into the record that I was not
11 agreeing to it, but I would not oppose it.

12 Q. Okay, and what-- did the DA make a motion to
13 consolidate those cases?

14 A. The DA made an ore tenus motion here in this
15 courtroom, I believe, to consolidate the two cases.

16 Q. Okay. Now did you do anything or was your father
17 associated with you or working with you, co-counsel in this
18 case?

19 A. Yes, he was.

20 Q. Did either of the attorneys for Mr. Flowers make any
21 motions that had anything to do with his speedy trial rights?

22 A. In our first set of motions, we entered a Motion for
23 Speedy Trial in all four cases.

24 Q. Which included this one?

25 A. That's correct.

26 Q. Okay. Now, sir, could you tell me, please, if, what
27 happened with the prosecution's or the State's motion for
28 consolidation?

29 A. In the State's motion for consolidation, they

1 presented it to the Court, as I said, here in this courtroom,
2 which is Attala County. The Judge said that he would grant the
3 motion, and it was my assumption that he did, in fact, orally
4 grant the motion, but the DA was to prepare an order to send to
5 him to sign. Then we had a hearing in Grenada County, I
6 believe. The prosecution entered an order or a motion
7 withdrawing their consolidation.

8 Q. Okay. Can you do the best you can, if you can, about
9 what-- and if you don't know, tell us that, about what period
10 of time these events occurred, and at least share with us the
11 sequence. You have talked to us about a motion for
12 consolidation. You have talked to us about granting it and
13 denying it, and you have also talked about yourself making a
14 motion for a speedy trial. Can you put these things in
15 sequence?

16 A. I would have to consult my calendar for the exact
17 dates, but I know the Motion for Speedy Trial was done with the
18 first set of motions. Later the prosecution entered its motion
19 orally to consolidate the two cases. I am thinking it's the
20 following week we met in Grenada County, and that's when they
21 rescinded their motion to consolidate. I immediately filed a
22 Motion to Consolidate all four cases after that was, they
23 rescinded their motion.

24 Q. Okay, and what was, what happened with that motion?

25 A. The Motion to Consolidate all four that I presented,
26 the Judge denied that Motion.

27 Q. Okay. Was there a trial date set for, for any of the
28 cases that were you handling?

29 A. Yes, all four cases were set for October 13th.

1 Q. And did any trial occur on that day?

2 A. Yes, the CR97-369 which was where Bertha Tardy was
3 the victim.

4 Q. Okay. Did anyone-- at any point in time did you
5 request a continuance for any of the trials?

6 A. No, I did not.

7 Q. At any point in time did your father request a
8 continuance for any of the trials?

9 A. No, sir.

10 Q. At any point in time did the Defendant in any way
11 request before the Court or in a motion or any kind of
12 presentation a continuance of the trial?

13 A. No.

14 BY MR. LUMUMBA: I have no further questions.

15 BY THE COURT: Mr. Evans.

16 CROSS-EXAMINATION BY MR. EVANS:

17 Q. Mr. Gilmore, I believe you filed a Motion for Change
18 of Venue in this cause; is that correct?

19 A. That is correct.

20 Q. And I believe when we met with the Judge in Winona,
21 you and your father told the Judge that it was no way that
22 y'all were ready to go to trial, and at that point we entered
23 into a meeting where we, the Judge set a schedule of when
24 discovery would be available and when the case would go to
25 trial; is that correct?

26 A. That is correct.

27 Q. And that was by agreement of the parties for both
28 sides?

29 A. The discovery schedule was on agreement, yes.

1 Q. Both parties agreed on the trial date the Judge said
2 he could have the courthouse available in Lee County, was it
3 not?

4 A. I'm not sure if that was the date or a subsequent
5 date, but he said that, he is the one that set the date for
6 trial.

7 Q. But the parties, Defense Counsel and the prosecution
8 agreed to that date, did they not?

9 A. Yes.

10 Q. And all four cases were set on that date?

11 A. That is correct.

12 Q. That was the first date, I believe, that the Court
13 could get the courthouse in Lee County where the case had been
14 transferred to?

15 A. That's what the Judge indicated. I'm not aware of
16 any scheduling that the Judge or that Lee County had.

17 Q. Defense at that point or at some point after that
18 asked for an election wanting to know which case the State
19 would call up first; is that right?

20 A. That's correct.

21 Q. And the State gave that notice of election as to
22 Bertha Tardy's case being called up first?

23 A. That is correct.

24 Q. We tried Bertha Tardy's case on the first date that
25 it was available to set it; is that right?

26 A. We tried it when the Court said to try it.

27 Q. And that was when the Court said the first date the
28 courthouse was available; is that right?

29 A. That's what the Court said, yes.

1 Q. Once that case was tried, the Court entered an order
2 continuing the other causes for good cause at that point
3 because it could not try all of them at that same time; is that
4 right?

5 A. That is in the record, yes.

6 Q. And at this point the State has been prepared and
7 ready to go to trial at all times since indictment, has it not?

8 A. I couldn't testify to whether or not the State was
9 ready.

10 Q. The State has never asked for a continuance or a
11 postponement of any sort, has it?

12 A. I believe that the, Mr. Horan did prepare a motion
13 for continuance after the last trial.

14 Q. For good cause?

15 A. For good cause.

16 Q. Okay, but up until that point, the State had asked
17 for nothing, and that was only because there was no time
18 available to try the other cases; is that right?

19 A. As far as I know.

20 Q. And the next time that the courthouse was available
21 that we could try the next case in order was today; is that
22 right?

23 A. That is what the Court indicated. I have no actual
24 knowledge of their scheduling.

25 Q. And now that new counsel was hired in this case, they
26 asked for a continuance past this date; is that right?

27 A. I believe that they were to file that motion, yes.

28 Q. And you are still attorney of record in two causes;
29 is that right?

1 A. At this point, yes.

2 Q. And you have not filed a motion for continuance in
3 those two causes; is that right?

4 A. I have one prepared for hearing today.

5 Q. Well, are you saying that you are or are not ready to
6 go to trial on the other two causes?

7 A. When the-- in October we were ready to go forward
8 with all four cases.

9 Q. So y'all would be ready at this point to go forward
10 on the other two; is that right?

11 A. At this point, no. When it became to my knowledge
12 that Mr. Flowers or his family had hired opposing counsel-- I
13 mean other counsel, I did not know at what vantage point I
14 stood with Mr. Flowers, and I ceased to file any and all
15 motions until such time as I knew where I stood with Mr.
16 Flowers.

17 Q. Well, you understand where you stand with the Court,
18 do you not?

19 A. Yes.

20 Q. The Court has said that you represent him on those
21 other two causes at this point?

22 A. That's correct.

23 Q. And the State is ready to go to trial. What I'm
24 interested in is the Defense saying at this point that they do
25 not anticipate filing a motion for continuance because if they
26 are not, we are going to need a trial date in that cause?

27 **BY THE COURT:** He just said that he has one to
28 file to be heard today.

29 **BY MR. EVANS:** Oh, okay, to be heard today.

1 **BY THE COURT:** Was that right, Mr. Gilmore?

2 BY THE WITNESS: Yes.

3 BY MR. EVANS: Okay, I missed that part. Thank
4 you, Your Honor.

5 BY THE WITNESS:

6 A. We also have a Motion to Withdraw as Counsel in those
7 other two motions-- I mean in those other two trials.

8 Q. But you will agree, will you not, that at the time
9 that this case, that when we did the discovery and the trial
10 date, the scheduling order that was set up, that you and your
11 father both told the Court that y'all were not prepared to go
12 to trial at that time, and you needed further time to prepare?

13 A. I believe the time that that was done all of the
14 discovery had not been completed. We had had, not had any time
15 to investigate, talk with the witnesses. As a matter of fact,
16 I believe the, several of your witnesses were, came forward
17 closer to the trial, and y'all supplemented them. I mean at
18 the time that the trial was set, discovery was still going on.
19 I believe the motion deadline was not even up at the time, at
20 that time.

21 Q. All right, let me ask you like this, and see if this
22 will refresh your memory. Is it not true that before the Judge
23 ever met with us, we had already furnished you discovery in
24 this case?

25 A. Not complete discovery, no.

26 Q. We had furnished you discovery in this case, had we
27 not?

28 A. Before you met, we met with the Judge?

29 Q. Yes.

1 A. I can't recall.

2 Q. And I believe it's in the record you telling the
3 Court that we had already given discovery in this--

4 A. I remember at one hearing I testified to that, but I
5 can't testify whether it was the first day we met or not.

6 Q. And it was at that hearing that you told the Court
7 that y'all could not be prepared to go to trial, that we had
8 furnished you close to 100 names in discovery, and that y'all
9 had to have plenty of time to talk to these witnesses?

10 A. As I said, I do not recall which time that was said,
11 but I am sure I said something similar to that.

12 Q. But the main--

13 **BY THE COURT:** --We have covered a lot of this
14 ground now, and I'm letting y'all do this and put
15 this on so there will be a complete record before the
16 Supreme Court. But the Court is pretty well aware
17 itself of the facts, so I don't need to hear them but
18 once. So let's move along.

19 **BY MR. EVANS:** Yes, sir. I just want to make
20 sure that it's clear what the answer is because it is
21 kind of vague on this question.

22 **BY THE COURT:** Well, it's not vague to me, so
23 let's move on.

24 **BY MR. EVANS:** Well--

25 **BY THE COURT:** It's in the record. It's in the
26 record about three or four times.

27 **BY MR. EVANS:** All right. Well, I have no
28 further questions of this witness then.

29 **BY MR. LUMUMBA:** I just have a couple of

1 questions.

2 REDIRECT EXAMINATION BY MR. LUMUMBA:

3 Q. When the conference took place where you set up a
4 discovery schedule and a calendar for the case, when was that?

5 A. It was before June of '97. I can't recall the exact
6 dates.

7 Q. Now this case, the indictments occurred in March of
8 19--uh, in March of 1997?

9 A. That's correct.

10 Q. The Court's order, which is a matter of record,
11 indicates that the calendar was set up, I think, in April or
12 sometime before April the 28th of 19-- just a minute. Let me
13 take a close look at the Court's order. I am trying to see if
14 this jogs your memory at all. (Pause)
15 While I'm looking for that, let's go to a slightly different
16 matter. Were you prepared to try this case and all the other
17 cases in October of 1997?

18 A. Yes.

19 Q. Were you prepared to try this case in November of
20 1997?

21 A. Yes.

22 Q. Any time prior to the time when you became aware that
23 your client had hired additional counsel, had you ever
24 expressed any kind of reservations about trying this case?

25 A. No.

26 Q. Okay, in fact, prior to June the 5th of 1997, when we
27 met and had a hearing in Lee County, at any time prior to that,
28 had you been unprepared to try this case?

29 A. What date did you?

1 Q. --January 5th, 1998, I'm sorry. January 5, 1998.
2 Recall when we met in Lee County?

3 A. In December when -- I can't remember the exact date
4 when I became aware that you were, had been associated-- I had
5 several motions prepared. I did not file them when I became
6 aware that you had been hired. I did not know where I stood
7 with Mr. Flowers.

8 Q. Okay, so it wasn't a question of you being like
9 unprepared and that you couldn't handle the facts of the case.
10 It was a question that you were uncertain of what your role
11 would be in the representation scheme; is that correct?

12 A. That's correct.

13 Q. Okay. Okay, the Court's order which was issued - it
14 says was issued on the 8th day of January of 1998 - indicates
15 that the venue for the cases was changed on April the 28th,
16 1997. And it says that the Court also set by agreements of the
17 party trial dates for October the 13th of 1997. Would that--
18 first of all, did the Court set a trial date for about October
19 of 1997 at that time?

20 A. Yes.

21 Q. Did you ask for October of 1997?

22 A. No.

23 Q. Did you object to October of 1997?

24 A. No.

25 Q. Did you, had you already made your motion for a
26 speedy trial?

27 A. Yes.

28 Q. Was it clear to everyone who could read the records
29 that you had made that motion?

1 A. Yes.

2 Q. Are you aware of the law which says the Defendant
3 does not have to set its own--

4 BY MR. HORAN: --Your Honor, are we going to-- I
5 object to--

6 BY MR. LUMUMBA: --First of all--

7 BY MR. HORAN: --whether or not--

8 BY MR. LUMUMBA: --First of all, how many--

9 **BY THE COURT:** --Wait a minute. Let him state
10 his objection and his grounds.

11 BY MR. LUMUMBA: Okay.

12 BY MR. HORAN: He is asking about legal
13 arguments--

14 BY MR. LUMUMBA: --Okay, excuse me--

15 BY MR. HORAN: --rehashing--

16 BY MR. LUMUMBA: --Excuse me. One of my
17 objections is, is that I think if we have--

18 BY MR. EVANS: --Your Honor--

19 BY MR. LUMUMBA: --Excuse me--

20 BY MR. EVANS: --May I be heard?

21 BY MR. LUMUMBA: Excuse me; excuse me--

22 BY MR. EVANS: --I thought we had it clear that
23 when we have objections, we are going to be allowed
24 to--

25 **BY THE COURT:** --Listen, gentlemen. Both of
26 y'all be quiet.

27 BY MR. LUMUMBA: Okay.

28 **BY THE COURT:** You are going to speak one at a
29 time. This lady has to take this down. I have to

1 hear you.

2 BY MR. LUMUMBA: Okay.

3 **BY THE COURT:** When he has got an objection, let
4 him state his objection and give the grounds. Then
5 I'm going to let you respond to it.

6 BY MR. LUMUMBA: Okay. Yeah, and I appreciate
7 that Judge, but my objection was, is that they are
8 only supposed to have one lawyer handling one client,
9 one witness at a time. So that means that when one
10 of them is talking, the other one should, you know,
11 not participate. That is what I would ask to occur.

12 **BY THE COURT:** Okay. There should be one lawyer
13 participating at one time. But y'all don't interrupt
14 each other, and you make your statements to the
15 Court, your arguments to the Court. Now Mr. Horan,
16 what was your objection?

17 BY MR. HORAN: My objection is, Your Honor,
18 that--

19 **BY THE COURT:** --Although I just violated what I
20 said, but I'm going to let you do it this time--

21 BY MR. HORAN: --he is asking him whether or not
22 he is familiar, right. He is asking him if he is
23 familiar with some case law. Is he going, is he
24 testifying or is he not testifying? He is asking
25 about orders that are in the record that the Court is
26 familiar with that the Court can take judicial notice
27 of. He doesn't need to ask him about these
28 particular things. They are a matter of record.
29 It's just wasting the Court's time.

1 **BY THE COURT:** The things that are in the record
2 I am aware of. Let's move on to things that might
3 enlighten me on something I don't know.

4 BY MR. LUMUMBA:

5 Q. Okay. Okay, well, I think what is important is that
6 you at no point offered the 13th as the date; is that correct?

7 A. No.

8 Q. Would you have been willing and able to go to trial
9 on those cases or on any of the cases prior to October the 13th
10 if you would have been given the opportunity?

11 A. We would have been ready when the Judge, when the
12 Court set the date for trial.

13 Q. Okay, so you never said that you would not be ready
14 on the trial date. You have never made that statement?

15 A. Right.

16 BY MR. LUMUMBA: Okay. I have no further
17 questions of this witness.

18 **BY THE COURT:** Okay. Is that all your
19 argument?

20 BY MR. LUMUMBA: No, I'm--

21 **BY THE COURT:** --I realize you may have some
22 rebuttal to what he says, but is that all your
23 initial argument?

24 BY MR. LUMUMBA: No. I have one more witness
25 I'm going to call.

26 **BY THE COURT:** Oh, I'm sorry. Mr. Gilmore, have
27 a seat over here. Who do you have next?

28 WITNESS STEPS DOWN.

29 BY MR. LUMUMBA: I'm going to call as a witness

1 Doug Evans.

2 BY THE COURT: All right, Mr. Evans, come around
3 and be sworn.

4 DOUG EVANS,
5 upon being called to testify as a witness on Defendant's Motion
6 to Dismiss for Violation of Speedy Trial Rights, having first
7 been duly sworn, testified as follows, to-wit:

8 DIRECT EXAMINATION BY MR. LUMUMBA:

9 Q. Witness, you are the District Attorney of Lee County;
10 is that correct?

11 A. No--

12 Q. --not Lee County, but District Attorney of Montgomery
13 County; is that correct?

14 A. Yes, I am.

15 Q. Okay. At some point did you seek an indictment in
16 the case which is currently called State of Mississippi versus
17 Curtis Flowers?

18 A. Yes, I did.

19 Q. And when you sought the indictment against Mr.
20 Flowers, did you make a presentation to the Grand Jury at that
21 time?

22 A. Yes, I did.

23 Q. Did at any point in time before that Grand Jury, did
24 you seek to have, did you ask the Grand Jurors to indict Mr.
25 Flowers in a single--

26 BY MR. HORAN: --Your Honor, I'm going to object
27 to that. That is absolutely no, has no relevance as
28 to whether or not--

29 BY THE COURT: --The fact that it was done is

1 sufficient. Why he did it is not relevant.

2 BY MR. LUMUMBA: Okay, no, I'm just asking if he
3 ever asked to have him indicted in a single
4 indictment.

5 BY THE WITNESS:

6 A. The indictment was presented to the Grand Jury, and
7 the Grand Jury returned four separate indictments.

8 Q. All right, did you ever ask the Grand Jury to indict
9 in a single indictment? That's my question.

10 A. What happened in the Grand Jury is secret.

11 Q. Excuse me; that is not my question. You can always
12 explain once you answer the question.

13 BY MR. HORAN: Your Honor, I have already voiced
14 an objection to this line of questioning.

15 BY THE COURT: I'm going to sustain the
16 objection. Let's move along.

17 BY MR. LUMUMBA:

18 Q. Did you oppose the Defense's Motion to Consolidate
19 all cases into one indictment?

20 A. Not only did I not oppose it, at one time I filed a
21 motion to consolidate two of the cases. Now in response to
22 that, after researching the law, it was obvious that the law in
23 Mississippi was that cases cannot be consolidated once they are
24 indicted.

25 Q. Okay.

26 A. And since the state law said that they could not be,
27 it would have been a violation of my duty of office if I had
28 tried to consolidate cases with the idea that the Supreme Court
29 would later reverse them. So because of that fact, we had to

1 bring to the Court's attention that the state law was that the
2 cases could not be consolidated in Mississippi.

3 Q. Okay. And so is the state law that you could not
4 have included these cases in a single indictment?

5 A. No. That is the prosecutor's discretion in the State
6 of Mississippi.

7 Q. Okay. And it was your discretion in this case?

8 A. That's exactly right.

9 Q. Okay. Now secondly, did you-- what case was it that
10 convinced you that it was the state law that the Judge couldn't
11 consolidate cases?

12 BY MR. HORAN: Judge, we are going to be here
13 all day like this.

14 BY THE COURT: That is sustained.

15 BY MR. LUMUMBA:

16 Q. Okay. Did you find any case where one defendant was
17 involved with a single--

18 BY MR. HORAN: --Your Honor.

19 BY MR. LUMUMBA: --Excuse me; when I get
20 finished--

21 BY MR. HORAN: --I'm objecting. I'm objecting to
22 the question--

23 BY MR. LUMUMBA: -- I--excuse me--

24 BY THE COURT: --Let him make his question-- not
25 until he asks the question, you can't object. Let
26 him ask his question.

27 BY MR. LUMUMBA:

28 Q. Okay. Did you find any case in Mississippi law where
29 one defendant was accused in a single transaction of committing

1 crimes which would have constituted several different counts,
2 the same crime of murder where one defendant -- I'm not talking
3 about two defendants, where the Court ruled that the
4 indictments could not be consolidated for that one defendant?

5 BY MR. HORAN: Objection, Your Honor.

6 BY THE COURT: Sustained.

7 BY MR. LUMUMBA:

8 Q. Is there any-- did you put any, did you make any
9 written presentation, any documented presentation of the law
10 you cited when you brought the Court to this knowledge that it
11 couldn't happen in the State of Mississippi?

12 BY MR. HORAN: Objection, Your Honor.

13 BY MR. LUMUMBA: Judge, I think I am entitled to
14 find out his -- let me explain my question. The
15 Court, the Supreme Court may be interested in his
16 state of mind. He certainly tried to make them
17 interested in his state of mind, so I'm trying to see
18 if his state of mind was actually the one that he
19 proposes or he suggested that it was, or whether that
20 is just a pretext. So now if, in fact, he really had
21 some kind of legal concern about the state of the
22 law, then I wanted to know if that concern rose to
23 the dignity of him actually writing it up on a sheet
24 of paper and submitting that to the Court. I think I
25 am entitled to ask that question.

26 BY THE COURT: Well, the problem with it is, is
27 that whether or not they were consolidated is within
28 the discretion of the Court regardless of what the
29 District Attorney or Defense Counsel do. Both of

1 them presented motions to consolidate. This Court
2 exercised its discretion and found that it could not
3 do that and ruled, and there are orders in the file
4 making that ruling. And I believe, I believe I have
5 cited in that ruling the case law that I relied on,
6 and that's the only thing that is relevant. What his
7 mind set was is not relevant because it's
8 discretionary with me. So on that basis, I sustain
9 the objection.

10 BY MR. LUMUMBA:

11 Q. Okay. But you did oppose the Motion to Consolidate;
12 right?

13 A. Which one?

14 Q. The Motion to Consolidate which was made by the
15 Defense?

16 A. The motion that they made at the last motion that was
17 made I did oppose.

18 Q. Thank you.

19 BY MR. LUMUMBA: I have no further questions.

20 EXAMINATION BY MR. HORAN:

21 Q. Mr. Evans, the October 13 trial date was within the
22 270 day rule, was it not?

23 A. Yes, it was.

24 Q. Okay, and there is an order continuing the other
25 three cause numbers from that date to this particular date,
26 January 26th, 1998; right?

27 A. Yes.

28 Q. That order states there is good cause showing; is
29 that correct?

1 A. That's correct.

2 Q. Mr. Gilmore, John Gilmore and his father, Billy
3 Gilmore, they were involved in the defense of the first case
4 that was tried in October; is that right?

5 A. That's correct.

6 Q. And I believe we heard approximately 35 motions that
7 they had filed?

8 A. Yes.

9 Q. At any time did they disagree with the Court setting
10 of October 13th, 1997, as the trial date?

11 A. No. Specifically, one reason that the date was set
12 that far in advance is that they asked the Court for additional
13 time to talk to witnesses and said that they could not be
14 prepared--

15 BY MR. LUMUMBA: --Objection.

16 BY THE WITNESS: --unless they--

17 BY MR. LUMUMBA: -- Excuse me; excuse me. Excuse
18 me; excuse me. Objection. I object. The answer
19 includes hearsay, and if he had a question to
20 present to the previous witness, he could have
21 presented it.

22 BY THE COURT: Sustained.

23 BY MR. LUMUMBA: Okay.

24 BY MR. HORAN: I have nothing further, Your
25 Honor.

26 BY MR. EVANS: Your Honor, I would like to
27 finish my--

28 BY THE COURT: --No, sir. Now you have got to
29 respond just to questions.

1 BY MR. EVANS: I was responding to the question,
2 Your Honor.

3 BY THE COURT: But you were responding with
4 hearsay. If you can--

5 BY MR. EVANS: --No, sir. I was present.

6 BY MR. LUMUMBA: It is still hearsay.

7 BY MR. EVANS: It's not present-- it's not
8 hearsay if I was present.

9 BY MR. LUMUMBA: No. Everybody who comes in, if
10 you are not present, then it's double hearsay. I
11 would advise Counsel to go back and read the Rules of
12 Evidence.

13 BY MR. EVANS: I know the Rules of Evidence.

14 BY THE COURT: Wait, wait, wait, wait. Look, I
15 was present at all this, so y'all are talking and
16 preaching to the choir. Sustained. I have heard all
17 this.

18 BY MR. LUMUMBA: Okay.

19 BY MR. HORAN: I have nothing further, Your
20 Honor.

21 MR. EVANS STEPS DOWN FROM WITNESS STAND.

22 BY MR. LUMUMBA: I have no further proof.

23 BY THE COURT: Okay, any further argument at
24 this time? I'm going to give you an opportunity to
25 have rebuttal after he makes his argument.

26 BY MR. LUMUMBA: My argument is only
27 supplemented by saying this. Prosecution still
28 hasn't cured -- we have to keep in mind that it's
29 their burden to show why the violations were either

1 for good cause or caused by the Defendant. They have
2 failed miserably to do that. The answer to the
3 question that it's in my discretion, and in my
4 discretion we had four different indictments coming
5 out of the Grand Jury, pretty much solves this
6 issue. He cannot, for whatever reason or tactics he
7 decided to separate those cases in the first place,
8 he cannot take advantage of that and then come back
9 now and say that the Defendant's rights to a speedy
10 trial were violated because all the cases couldn't be
11 tried by the time the 270 day limit expired.

12 Also, Judge, I would point out to the Court that
13 there has been no showing that the District Attorney
14 made any effort to try all four cases within the time
15 period involved. There has been no showing at all
16 that there was an effort to set the date, for
17 instance, in May or in June or in July or in August.
18 No showing has been made on that issue whatsoever. I
19 think that with the showing we do have is that
20 Defense Counsel earlier on in the process, prior to
21 April, prior to the time that they had all the
22 discovery indicated that they needed the rest of
23 discovery to try their case. If, in fact, they were
24 in need of discovery to try their case, that is a
25 delay not caused by the Defense, but that is a delay
26 caused by the District Attorney himself. And there
27 is still on this record no signs of any delay.

28 The only thing we have was a date set on October
29 the 13th when all trials were set. After we got to

1 October the 13th, then the Court tells the Defense
2 and tells everyone else involved, I guess, that for
3 whatever cause, the case needed to be continued to
4 the 26th. There is no indication that the attorneys
5 for the Defendant were advised prior to October the
6 13th that at the end of that trial the cases would
7 all be continued beyond the 270 day limit. There was
8 no indication that they would have any reason to
9 believe that the cases wouldn't be tried back to
10 back.

11 And we can raise a number of other little
12 elements about the truth, but the practical reality
13 of this case comes down to this. And I think that
14 any appellate tribunal will see it. We can try to
15 dig up dust, dig up bones from the grave, try to
16 create things, do a little magician act and create
17 delays which really weren't real, but the reality is
18 here is that when the DA went to that Grand Jury and
19 decided to come out there with four separate
20 indictments, he created a situation where it was
21 going to be very difficult, if not impossible, to try
22 these four cases within 270 days. These are all
23 capital murder cases. These are not misdemeanor
24 cases. These are not day trials or two day trials.
25 Properly tried, some of these cases could take a
26 month by themselves.

27 And so the problem that you have here is that
28 the District Attorney asked for something and got it
29 and now wants to have his cake and eat it too by

1 being able to try the cases at a later time. So that
2 is the basis of our motion.

3 BY MR. HORAN: Your Honor, we have spent an hour
4 on something that is plain from the record, that the
5 Defendant got a trial within 270 days. All four
6 cases were set on October the 13th. Three of them
7 have been continued from October 13th to this date
8 with an order entered on all three cause numbers.
9 The scheduling order that was previously set was by
10 agreement of the parties. There is not much to
11 dismiss. He is not entitled just because it goes
12 outside of 270 to have a dismissal. He has to prove
13 that there was not good cause, and the Court has
14 ruled that you didn't have to have an order, just
15 that the Court would find that there was good cause
16 for the delay.

17 October 13th was within 270 days. A continuance
18 from October 13th to today for good cause shown has
19 been entered on the other three cause numbers, and
20 that is the end of the inquiry, Your Honor. That's a
21 simple call.

22 BY MR. LUMUMBA: Good cause is cause which
23 cannot be avoided and which has not been caused by
24 the Court or the State. What is the good cause which
25 allowed these cases to be continued from outside the
26 270 day limit, which allowed the prosecution, first
27 of all, not to try all these cases on the 13th?

28 You know, if you start looking at the 13th,
29 first of all, you are looking at the facts too late.

1 It is necessary to look at the facts early on and
2 understand why you were presented with four trials on
3 one day in the first place. That is what we have to
4 do. And once that is, once you see that that is
5 something which occurred because only because of the
6 prosecution's discretion, because of what it decided
7 to do, then I think that what we have done is we have
8 decided the issue there by showing that the
9 prosecution has caused the delay beyond the 270
10 days.

11 You know, this case is clear, crystal clear that
12 there is no way that they should be able to violate
13 this 270 day rule. Defense Counsel could have done
14 no more than he did to preserve the record of his
15 client's interest to a speedy trial. He made a
16 Motion for a Speedy Trial. According to his
17 testimony, he never relented on that. He never
18 agreed to the transfer of the cases from October the
19 13th to this date. He never agreed to that. He
20 never agreed to that. The Court may have done it,
21 but the Defense Counsel-- there is no record
22 whatsoever in his testimony or anywhere else that he
23 ever agreed to that. And so the point of the matter
24 is, is that his rights were violated up until the
25 13th because he didn't have all four cases together,
26 and then the violation continued after the 14th--or
27 the 13th of October.

28 **BY THE COURT:** Okay. The Court has ruled on a
29 similar motion that raised the federal questions in

1 regard to a speedy trial. The Court adopts the
2 findings made in that order which I believe set forth
3 the chronology of events as they occurred. There are
4 a few additional things that I want to put in the
5 record.

6 I will enter a similar order that will show
7 those matters and these too. At the conclusion of
8 the trial, the next hearing that we had was, I
9 believe, it was the first week in November. I can't
10 recall the particular date. That was for the purpose
11 of hearing a Motion for a New Trial. The Court at
12 that time did not know the status of the first case,
13 what it would be, and until that Motion had been
14 ruled on, there could not be any setting of anything
15 else until we saw where we were because, you know, if
16 sufficient facts had been raised at that time, it is
17 possible that case might have to be the one that had
18 to be tried.

19 In that interim the Court determined through its
20 Court Administrator dates that would be available to
21 try the next case. This case is in Lee County, a
22 large urban county which was a considerable court
23 docket. That limits this Court as to what it can do
24 in relation to getting trial dates. The soonest date
25 that the Court could get was January the 26th. On
26 that motion, on that day on the Motion for New Trial,
27 the Court set and informed Counsel that the next
28 setting would be January the 26th. No objection was
29 made by anybody at that time to that particular

1 setting. No objection was made to that setting at
2 all until January the 5th, 1998, when a Motion for
3 Continuance was filed by the Defendant.

4 On December the 3rd in Lee County there was a
5 motion -- the Court had designated that date as a
6 date to pull the venire in that case, special venire
7 in this case for the January 26 hearing. At that
8 time new counsel for the Defendant appeared and filed
9 a Motion to Delay that Drawing of the Special
10 Venire. So the Court's conclusion from that is that
11 they, while it was not a formal motion for
12 continuance, they certainly wanted some continuance
13 at that date for certain purposes of this trial, and
14 the Court denied that Motion.

15 The 270 day rule is not an inviolate rule if
16 good cause is shown, and the cases are fairly clear
17 as to what the Court establishes as good cause when
18 the Court can go beyond 270 day rule. I think in
19 line with the case law of this state that the 270 day
20 rule has not been violated in this case, and I
21 overrule the Motion for a Speedy Trial.

22 And I will furnish you a written order to that
23 effect, both of you, and try to incorporate the, what
24 I have just said.

25 Let me further respond that the case law in this
26 state is that the District Attorney certainly has the
27 right to indict separately. Whether or not he has to
28 then try them all within the 270 day rule, I don't
29 know that that has been specifically addressed other

1 than the fact that there are numerous cases that say
2 you can continue past the 270 day rule for good cause
3 shown.

4 The consolidation issue, I have answered that, I
5 think, in the record so I won't go any further on
6 that. All right, sir. What is next?

7 BY MR. LUMUMBA: The next thing we have here,
8 Judge, for you is a Motion to Certify this issue and
9 the double jeopardy issue for a hearing on
10 interlocutory appeal before the Supreme Court.

11 BY THE COURT: All right. I don't believe I
12 have a copy of that petition.

13 BY MR. LUMUMBA: I am pretty sure you should.
14 Yeah, it is called, it has got a long name on it.

15 BY THE COURT: (Pause) Yes. That is correct.

16 BY MR. LUMUMBA: You have it; right?

17 BY THE COURT: Yes, sir. I have got it.

18 BY MR. LUMUMBA: Let me just catch up with my
19 copy of it. (Pause).

20 BY THE COURT: All right, sir.

21 BY MR. LUMUMBA: Okay. Essentially, what we do
22 in that Motion is cite a lot of law which indicates
23 that either the Court in its ruling is mistaken or
24 that at least there is considerable grounds to
25 question whether or not another decision would be
26 appropriate. What is important, of course, is that
27 the Court in its own statement on this issue about
28 the speedy trial has acknowledged that it doesn't
29 believe that a decision has been made which says that

1 once the District Attorney opts to in his discretion
2 create a situation where there are several
3 indictments, whether then the District Attorney is
4 required to go, to resolve this matter or to resolve
5 all four matters within the 270 days.

6 It appears to me that that is at least a
7 question that the Court should want answered unless
8 it wants to put the State, the Defendant, and all
9 concerned to untold expense to have the issue
10 resolved after, possibly after a lengthy trial
11 process. So I think that the question should be
12 resolved beforehand so we can see whether or not this
13 Defendant was actually entitled under these
14 circumstances to have his rights to a speedy trial
15 determined or to have his rights to a speedy trial in
16 all four cases given the scenario of this case.

17 One of the things that we will add to the
18 presentation on that Motion is that the Court made
19 comment about a Motion to Continue the Selection of
20 the Jury Venire. I should indicate at the time-- of
21 course, that Motion was denied, so certainly that
22 Motion didn't in any way cause any delay. And I
23 believe that the Court would agree with me that he
24 told Counsel at that time that the case was going on
25 the 26th unless he filed some good reason for it, and
26 no good reason had come before him to that point.

27 So, of course, the Court is not charging the
28 defense with any delay at that point; plus there was
29 no delay. The case continued to be set to the 26th

1 and continued to be so set until after the 270 days
2 had expired. But I also point out to the Court that
3 the double jeopardy issue is an issue that we believe
4 that we should take before the Court of Appeals or
5 the Supreme Court, the Supreme Court in this instance
6 because we are talking about interlocutory appeal.

7 Double jeopardy has been found on several
8 occasions to be the kind of issue that you would, in
9 fact, take before the Court in order to get a
10 determination prior to the time that you take a case
11 to trial. The trial itself is a violation of the
12 defendant's rights if there is some question-- if, in
13 fact, his rights of double jeopardy have been
14 violated.

15 So you cannot remedy that, the courts that have
16 held, and one of the cases they held it in was the
17 Beckwith case, Beckwith v. State which appears at 615
18 So.2d 1134. And in the Beckwith case they
19 specifically stated that the trial in the matter
20 where double jeopardy is in question is a violation
21 of the defendant's right itself should his rights be
22 ultimately determined to have been violated for
23 double jeopardy. So it can't be cured by post
24 conviction appeals.

25 So what we would suggest, and I think that the
26 Beckwith case demands it, and another case which I
27 cited for the Court in my brief also demands it, that
28 this case go immediately up to the Court of Appeals--
29 or the Supreme Court, I'm sorry, to the Supreme Court

1 in the status of an interlocutory appeal.

2 So that's what we would seek from this Court at
3 this time, an order certifying the case to be
4 reviewed by the Supreme Court before we-- and a
5 stay. We ask that a stay be granted so that we can
6 then get the determination of whether the Court can
7 proceed with this case. And I think it would be
8 helpful for the Court to know whether it can proceed
9 with any case. If, in fact, we are right on this
10 case, then we are right on all three of them. So as
11 far as double jeopardy, the facts are the same. As
12 far as the violation of speedy trial rights, the
13 facts are the same.

14 So the question becomes do we do the prudent
15 thing, the thing which is most prudent as far as the
16 jurisprudence is concerned as well as, as far as the
17 orderly administration of the system of justice, or
18 do we somehow just play to the public or, you know,
19 or let our grief for the victims or whatever else we
20 have motivating us, political offices in some cases,
21 or whatever it is get the best of us and rush this
22 case through, and then later on stay in court for
23 twenty years.

24 I just, I guess just tried a case in Pontotoc or
25 DeSoto County which is from Pontotoc where the man
26 had been in jail for twenty years. And like they
27 sometimes say, Stevie Wonder, even though he is a
28 blind man, could have seen at the time that there was
29 error in that case when they rushed it through in

1 Pontotoc in the first place. So the case was
2 reversed on three different occasions.

3 And so Governor Fordice stood up not long ago
4 and got up and gave a big speech about how long this
5 case had been in court and how terrible the court
6 system was because they kept a case around for twenty
7 years. But the right analysis would have been should
8 the men who had the cases before them: The District
9 Attorney, the Judge, and the Defense Attorney at the
10 time that they encountered these problems did what
11 should have been done, then the case wouldn't have
12 been around for twenty years.

13 So I think if we don't-- it doesn't take a lot
14 of vision in this case to see that (a) there is a
15 novel issue on the speedy trial question, and (b) on
16 the double jeopardy question, the courts almost
17 demand that you send it up for certification.

18 I would point out to the Court that the-- and
19 I'm not trying to hide anything from the Court. The
20 Beckwith case, which I gave to the Court or which I
21 have cited for the Court, also indicates that
22 normally double jeopardy is one of the main issues
23 that they grant this - what do you call it? - this
24 review for. But there can be other issues, right.
25 If they are-- if they meet the statute, meet the
26 questions raised by the statute which allows us-- or
27 the Rules; really it's the Rules. It's the appellate
28 Rule 5 point something which allows us to take these
29 up. And one of those questions has something to do

1 with is it a question which is unresolved by the
2 jurisprudence system in the State of Mississippi, by
3 the Supreme Court in the State of Mississippi.

4 And this question, according to the Court's own
5 words, the speedy trial question is one which at this
6 point is unresolved.

7 BY MR. EVANS: Your Honor, I'm going to be
8 brief. For a case to be sent up on interlocutory
9 appeal to start with, it must be a colorable claim.
10 Neither claim that he is filing is a colorable
11 claim. As to the 270 days, it's very clear what the
12 law is on that. That is not a question that is
13 unclear to the law. That has been settled. That
14 definitely is not a colorable claim.

15 As to the double jeopardy claim that he has
16 raised, the law has been clear in Mississippi for
17 many years that where a person is charged with
18 killing different people, even if at the same time,
19 that he can stand trial for each separate murder. So
20 that also is not a colorable claim. This is only an
21 attempt by the Defense to put this case off again.
22 It is a delay and stalling technique, and it should
23 not be sent up on interlocutory appeal because there
24 is no colorable claim there that can be filed.

25 BY MR. LUMUMBA: A brief rejoinder. I don't
26 think that the Supreme Court participates in delay
27 tactics or shenanigans which delay trials. That's
28 why they require us to file these appeals within a
29 relatively short period of time. That's why they

1 with some degree of proficuousness resolve these
2 matters quickly. So the only way that this could be
3 a delay tactic is if the Supreme Court was going to
4 collaborate or conspire with me to delay the trial.

5 Quite frankly, you give us a fair jurisdiction,
6 a fair county to try this case in, and an adequate
7 opportunity to try it, we anxiously await the day to
8 get before the bar and to vindicate this Defendant,
9 and not only in this case, but to vindicate him in a
10 way which is going to cause all kinds of
11 repercussions in the next case, in the case that has
12 already been tried, in addition to the other ones.

13 So we are far from afraid of the people that sit
14 across the table here from us, far from afraid.
15 There is nothing there to fear--

16 BY MR. EVANS: --Your Honor, I object--

17 BY MR. LUMUMBA: --Excuse me; excuse me--

18 BY MR. EVANS: --This is definitely -- may I
19 state my objection, Your Honor?

20 BY MR. LUMUMBA: --I think, no, I think he can be
21 quiet until I finish--

22 BY MR. EVANS: --May I state my objection
23 without him trying to interrupt me?--

24 BY MR. LUMUMBA: --He is interrupting me by
25 jumping up.

26 **BY THE COURT:** Let him finish. Then I'm going
27 to let you object. Then he is not going to interrupt
28 you either.

29 BY MR. LUMUMBA: Let me finish up, okay. Okay.

1 BY MR. EVANS: Your Honor--

2 BY THE COURT: --I note your objection. I'm
3 going to let him finish what he was saying. Then I
4 will let you object. This is all argument though,
5 gentlemen. You know, I mean everybody is going to
6 get a chance to respond to it.

7 BY MR. LUMUMBA: Okay. The point is that simply
8 stated, you know, his speculation about why these
9 motions are filed are really ill placed. Number one,
10 there is no fear over here of going to another trial
11 at appropriate moment with appropriate proofs and in
12 front of the appropriate audience. And we will try
13 to do all we can in our power to make sure that
14 happens, and I trust that the Court will assist us in
15 that fashion.

16 But secondly, let me say this, is that these are
17 clearly colorable issues. The Court has stated from
18 the bench that this issue has not been resolved. We
19 have an issue here where the State has exercised an
20 option to do something which has taken us behind the
21 270 day limit. Nobody here has said that once he
22 exercised that option, it wasn't a foregone
23 conclusion that you would go beyond the 270 day
24 limit. I think Stevie Wonder or Ray Charles here
25 again could see that that would be the situation in
26 any ordinary system of justice. I don't care if you
27 were talking about a small town, a big town, or a
28 large city, or whatever you were talking about.

29 Moreover, I add parenthetically that the

1 Defendant didn't choose Lee County as a place to try
2 this case, if I understand correctly.

3 But in any event, I would say to the Court that
4 what we have at this time before us is two issues, a
5 double jeopardy issue which demands an interlocutory
6 appeal if it is requested by the Defendant. And I
7 have cited two cases, one the Beckwith case and
8 another case which is in my brief, which I would
9 suggest that the Court should review very carefully
10 and read very thoroughly before making a decision on
11 this issue. And secondly, the issue of speedy trial
12 which the Court itself has indicated is an issue
13 which is unresolved in this jurisdiction to the best
14 of its knowledge. So I can't say why he says it is
15 not a colorable issue.

16 **BY THE COURT:** Let me make the Court's statement
17 clear. As far as I know, I don't know that this
18 particular fact situation has been presented to the
19 Supreme Court. The question of not whether 270 days
20 applies to this, because of this, has been addressed
21 by the Supreme Court, and they have ruled on good
22 cause it does not have to be tried within 270 days.
23 So I think the issue has been met.

24 Mr. Evans, did you have something further you
25 wanted to say?

26 **BY MR. EVANS:** Yes, Your Honor. I would like to
27 state a formal objection in the record at this point
28 that I strongly object to Defense Counsel attacking
29 me in this trial, in this hearing. I will not

1 address as far as the Court. I will let the Court
2 address that, but I object at this point and would
3 ask that Defense Counsel be told to act appropriate
4 in the courtroom.

5 **BY THE COURT:** Well, let me just respond to
6 that. Y'all both make your arguments to me, and I
7 will decide that one way or another. You have both
8 accused each other of delaying, so that kind of
9 equals out.

10 Okay, on this particular issue, I think the law
11 is clear on these two issues that are presented to
12 me. I don't think this-- the fact is it's real
13 clear. The cases involving these have been cited in
14 the orders that I have entered. Therefore, I don't
15 think there is an issue to be certified, and I'm
16 going to deny certification. Of course, as you know,
17 Mr. Lumumba, you have the right to appeal that order
18 within 14 days just like you would if I had certified
19 it, so the Supreme Court may decide they want to hear
20 it anyhow.

21 **BY MR. LUMUMBA:** Yes, sir.

22 **BY THE COURT:** Will you furnish me an order, or
23 do you want me to draw that?

24 **BY MR. LUMUMBA:** Judge, whatever you prefer,
25 Judge.

26 **BY THE COURT:** Okay, I will draw it.

27 **BY MR. LUMUMBA:** Okay, that will work. I might
28 indicate for the record, although I don't think it's
29 a real issue; what they, they are kind of suggesting;

1 we definitely intend, I can advise the Court, we
2 definitely intend to take this issue up. They, and
3 the Rules pretty much indicates that your orders
4 which you have-- well, in one case you haven't given
5 me an order yet on the Mississippi statute, but you
6 have given me an order on the double jeopardy issue;
7 right?

8 **BY THE COURT:** Yes, sir.

9 **BY MR. LUMUMBA:** That order should be amended
10 to indicate that you are denying the-- if you can, I
11 would appreciate that. That order, if you amend that
12 order to indicate that you are denying my Motion for
13 Certification.

14 **BY THE COURT:** No, no. What I'm going to do is
15 I'm going to enter a separate order denying your
16 certification on the speedy trial issue and the
17 double jeopardy. Then you have 14 days from that
18 order to appeal, not from my last order.

19 **BY MR. LUMUMBA:** Right, well--

20 **BY THE COURT:** I don't think the last order has
21 to be amended. I think this subsequent order I am
22 giving you will protect your rights for that
23 particular appeal.

24 **BY MR. LUMUMBA:** Well, I'm not sure. The rule
25 is a little bit ambiguous on it. I think that they
26 indicated that you should amend it. But let me say
27 this, and one of the reasons that I would request
28 that you amend it to make sure that we put this
29 beyond any peril is that we didn't get your order

1 denying the motion to bar on the basis of double
2 jeopardy until -- I have the envelope right here; I
3 can show the Court.

4 **BY THE COURT:** Friday probably.

5 BY MR. LUMUMBA: We got it the 23rd. So even
6 though it says it was signed on the 8th, it was
7 signed on the 8th of January is what it says. I
8 mean, you know, I don't know when you signed it
9 actually, Judge, but I am just saying--

10 **BY THE COURT:** I don't believe I signed that
11 order on the 8th. I signed it one day and mailed it
12 to you the next, so it should have been signed last
13 week. The date should have been-- if it has got the
14 8th on it, then it has got to be amended to reflect
15 the day I signed it.

16 BY MR. LUMUMBA: Okay, well, if you would do
17 that, I would appreciate that. Okay.

18 **BY THE COURT:** I will have to check that and
19 see. I don't know why I would have signed the 8th.
20 If I did, I will change that to reflect that date.

21 BY MR. LUMUMBA: Okay.

22 **BY THE COURT:** And if I am going to do that, I
23 will amend the order. You will have an order in the
24 record to appeal from.

25 BY MR. LUMUMBA: Okay, I appreciate it. Okay.
26 We have before the Court a Motion to Proceed, Motion
27 for Permission to Proceed Ex Parte on the Application
28 of Funds. I have submitted that Motion to the Court,
29 cited Almond v. State, 180 Georgia Appellate 475. I

1 cited the Ake case which we discussed, Ake v.
2 Oklahoma, 470 US 68, several other Supreme Court
3 cases, Wardius v. Oregon, 412 US 470. In fact, I
4 have a litany of cases cited in this brief which I
5 gave to the Court. And essentially, they say the
6 same thing: (a) that an indigent defendant is
7 entitled to appointment of experts if he needs them;
8 (b) that the whole issue of who-- the argument on
9 this which requires some showing of who the proposed
10 experts are and what they might say and what their
11 inquiry will be is one which should be ex parte.

12 Indigent defendants should not be compromised in
13 his trial strategy on his ability to get his experts
14 by the fact that he is poor. So he has to ask the
15 Court for the funds, and his requisition to the Court
16 should be not a matter of public concern. Experts,
17 we should be able to determine with the Court whether
18 or not the Court sees a reason to appoint these
19 experts. I think that there is unquestionably in the
20 areas that we are concerned about there has to be
21 experts appointed.

22 But we don't, we don't want to have to discuss
23 this with the DA. The DA is entitled at the
24 appropriate moment to get notice of any expert that
25 we intend to call. The DA is not entitled to slip
26 into our pocket and to find out who we have talked
27 to, because this is all attorney work product, until
28 such time as the expert comes up with an opinion that
29 we intend to use in court. Once the expert comes up

1 with an opinion that we intend to use, then we are
2 required to give that opinion to the District
3 Attorney's Office.

4 We are not entitled-- he is not entitled to any
5 expert opinions according to the Rules of discovery
6 which we don't intend to use or which are not, which
7 have not been scientific experiments which have been
8 used for presentation in this court. So we think
9 that the mere discussing of this in the public forum
10 with the DA present is a compromise of the
11 Defendant's right to secure his case. His right to
12 secure his case should not be compromised by his need
13 for funds, and so I think that is essentially what
14 the case law states. So we would ask the Court for
15 an opportunity to proceed ex parte on that issue.

16 For instance, we did not talk to any of the DA's
17 experts prior to the time that-- and had no
18 opportunity to talk to them, didn't even know who
19 they were prior to the time that he decided to
20 announce that these are his experts; he intends to
21 use them for trial. Here is their reports. That's
22 the only time that we had an opportunity to talk to
23 them. The DA is also being paid for by the State.
24 He is not bringing this money out of his pocket. He
25 is taking state money, court money, system money,
26 whatever. We are asking for the same kind of money
27 for an indigent defendant, and the system gives him a
28 right to have it.

29 So the question is we should be no more

1 compromised in this than the DA is in his
2 presentation.

3 BY MR. EVANS: Your Honor, briefly in response
4 to one comment opposing Counsel made; of course, he
5 wouldn't have any way of knowing because he wasn't
6 involved, but on the very day that the Gilmores were
7 hired in this case, they were told who the experts
8 would be in this case. At that point they did not
9 even have their reports finished, but they were told,
10 and they knew that they could talk to them at any
11 time they wanted to, which I think is proper.

12 Mississippi has a full discovery rule which
13 applies to both sides even though a lot of times
14 defense doesn't realize that, and all we are asking
15 for is on any witnesses that we be entitled to know
16 just as they would. As far as the experts, you know,
17 it's a question at this point of whether they are
18 entitled to anything. And to have an ex parte
19 hearing without us present would keep us from even
20 being able to object to whether or not these experts
21 were needed, whether or not they were relevant. It
22 would be absolutely necessary for us to participate
23 in any hearing so that we could file our objections.

24 BY THE COURT: How does the State have a dog in
25 that hunt? This is a question of whether I'm going
26 to expend public funds to appoint experts for the
27 Defendant. It's not going to go into factual
28 situations other than what is necessary for me to
29 make that determination. Where would the State have

1 any right to object in that?

2 BY MR. EVANS: Well, the State has several
3 rights to object. I think the State for one thing
4 has the responsibility of trying to protect the
5 county from having to spend money that they
6 shouldn't--

7 BY THE COURT: --No, sir. That is my
8 responsibility.

9 BY MR. EVANS: Well, it also in my opinion comes
10 under mine, Your Honor. Also, any expert that they
11 are attempting to get, the State would have an
12 absolute right of being involved in because we would
13 have a responsibility of being able to show what type
14 of expert they were looking for. We should have a
15 right at this point to be able-- if they are asking
16 the Court to appoint a person, to be able to state
17 evidence in the fact as to whether or not this is a
18 competent and reliable person. They are asking at
19 this point that the county pay for somebody that they
20 are trying to dream up a defense from, and I think at
21 that point we are definitely entitled to be present
22 and be involved in anything going on.

23 And I know of no case law that ever said that
24 the defense has an absolute right to come in and
25 present anything ex parte without the state present.

26 BY MR. LUMUMBA: All he needs to do is read
27 that--

28 BY THE COURT: --Wait, wait. I am familiar with
29 the law, gentlemen.

1 BY MR. EVANS: Also, at this point there is no
2 proof that this Defendant is indigent. There has
3 been four attorneys hired in this case. We have got
4 two attorneys that this Court had ordered to proceed
5 in this case who have now asked to be dismissed.
6 That is two other people that had already been
7 hired. They could participate in any of this
8 discovery or any of this following up that they
9 wanted to do which they were the ones that elected to
10 let them out.

11 BY MR. LUMUMBA: Judge, we are not asking the
12 Court to appoint an attorney. We are asking the
13 Court to appoint certain types of experts which would
14 be disclosed to the Court should we have this
15 hearing. So that is an irrelevant argument. We
16 don't, you don't hire attorneys to take scientific
17 experiments. You don't call them as experts on
18 ballistics. You don't call them as experts on shoe
19 prints or anything of that nature.

20 But the other thing, and simply put, Judge, I
21 think we are entitled to it under the rules. We
22 would ask for it. As far as this Defendant's
23 indigency, any kind of showing or affidavit this
24 Court wants to see, this man has no money.

25 BY THE COURT: I have already ruled for this
26 purpose that he may be.

27 BY MR. LUMUMBA: Okay, all right.

28 BY THE COURT: I have ruled-- the state is
29 paying the costs on the appeal except for attorneys.

1 BY MR. LUMUMBA: Right.

2 BY THE COURT: I do not rule that he is indigent
3 for purposes of appointing an attorney.

4 BY MR. LUMUMBA: Yeah, I'm not asking to--

5 BY THE COURT: --I know that.

6 BY MR. LUMUMBA: --appoint an attorney. Okay.
7 So that is basically our argument, and just so we,
8 you know, keep the record straight, you know, any
9 argument that the Defense Counsel or any defense we
10 might dream up to try to come up with, that sounds
11 like kind of a cut toward the Defense Counsel.

12 BY THE COURT: Well, I can go through all that
13 for both of you.

14 BY MR. LUMUMBA: But, you know, that's okay.
15 See I am not so sensitive that it bothers me, but I
16 think people who live in glass houses shouldn't throw
17 stones, you know.

18 BY THE COURT: Okay. The case law is pretty
19 clear as to what has got to be presented to me to
20 appoint an expert at all. In most cases experts are
21 not allowed. It depends on what is presented to me
22 as to whether or not he is entitled to these funds.
23 These are matters for the Court's determination, not
24 the State's determination. I must determine one,
25 whether he is indigent, and I must determine whether
26 or not he, we are going to expend county funds for
27 that purpose.

28 There might, there is possible that there might
29 be-- from looking at what I have been presented - I

1 doubt it - but there might be things that have to be
2 disclosed to me that at this point would not be
3 required to be exposed or delivered to the State.
4 The State will not be prejudiced by me having an ex
5 parte hearing on the appointment of experts only, and
6 the Defendant might be. Therefore, I'm going to
7 grant that Motion, and we will hear that at this
8 time.

9 You are ready, aren't you, Mr. Lumumba?

10 BY MR. LUMUMBA: Oh, yes, certainly.

11 **BY THE COURT:** All right, let's go to chambers.

12 BY MR. EVANS: Your Honor, may I address one
13 issue? Is the Court ruling that the State is not
14 even going to be able to be present when they state
15 why they need the experts?

16 **BY THE COURT:** Yes, sir. That's what I am
17 saying.

18 (WHEREUPON, THE COURT, MR. LUMUMBA, THE
19 DEFENDANT, THE COURT REPORTER AND TWO OFFICERS WITH
20 THE DEPARTMENT OF CORRECTIONS WENT TO CHAMBERS FOR AN
21 IN CAMERA HEARING AS FOLLOWS:)

22 BY MR. LUMUMBA: We are amending our original
23 motion. I think I asked for an expert, psychological
24 expert also. We are amending the motion to drop that
25 request.

26 **BY THE COURT:** All right, sir.

27 BY MR. LUMUMBA: We are not really asking for a
28 psychological expert.

29 **BY THE COURT:** Okay.

1 BY MR. LUMUMBA: What we are asking for is an
2 expert on ballistics and firearms. The experts that
3 I have been able to gather now -- my understanding is
4 that the DA's case comes largely, that his
5 examinations were done by the State Crime Lab if I'm
6 not mistaken. The people that we can find here in
7 this area tend to be people who have worked for the
8 State Crime Lab or worked closely with them in law
9 enforcement. But outside of the state, of course,
10 you have people who have worked for other law
11 enforcement, but at least don't have relationships
12 with the people here in Mississippi on this issue.
13 A Mr. David E. Balash, B A L A S H -- we did not have
14 an opportunity, because we had to go out of the state
15 eventually, to have these people sign affidavits.
16 They will sign affidavits, and I will represent to
17 this Court that affidavits are actually being signed
18 saying at least as much, which is before the Court
19 now. We can get affidavits signed; it's not a
20 problem.

21 But as you can probably see from the character
22 of information I have given you, this is essentially
23 stuff that comes to me by fax.

24 **BY THE COURT:** That is what I think you gave me
25 two motions of.

26 BY MR. LUMUMBA: Oh, okay.

27 **BY THE COURT:** Not two motions, two copies.

28 BY MR. LUMUMBA: You have two copies of that?
29 All right.

1 **BY THE COURT:** Excuse me; I didn't mean to
2 interrupt you.

3 BY MR. LUMUMBA: That's all right. Now as far
4 as-- do you have Mr. David E. Balash, B A L A S H?
5 Do you have that presentation there?

6 **BY THE COURT:** Yes.

7 BY MR. LUMUMBA: Well, he is a qualified
8 firearms expert and qualified to testify in the area
9 of ballistics. Mr.-- If the Court doesn't, unless
10 the Court has some questions about his
11 qualifications, then I will-- I think that the record
12 speaks for itself. He has plenty of professional
13 experience. He has worked for various different
14 police agencies; testified many, many, many different
15 times; been recognized as an expert in many, many,
16 many different courts from the presentation he has
17 given us here. He is accepted in Michigan Circuit
18 and District Courts for the counties of Wayne,
19 Washtenaw, Oakland, Monroe, Livingston, Lenawee,
20 Macomb, Allegan, and Kent Counties. Testimony by him
21 has also been given in probate courts of Wayne,
22 Oakland, and Washtenaw Counties. Probate Court is
23 like the Chancery Court here.

24 And so he is, he lists his professional
25 associations. He lists his degrees: BA and a minor
26 in criminal justice, and apparently he worked for the
27 Mississippi Department of State Police for a number
28 of years until he retired. So he is qualified.
29 As he points out, he is aware of the overall facts of

1 this case. He has not had the time to review all of
2 the facts of the case, but he is aware of the fact
3 that you had a shooting incident, that four people
4 were killed, that much after the incident one bullet
5 was found. That is one of the things I would say to
6 the Court that it's important to us. You had a
7 projectile found many days after this, I think almost
8 a month if I'm not mistaken, after the actual
9 shooting occurred, allegedly found in the mattress at
10 the store.

11 This is the only projectile which they were able
12 to match to any gun. Actually, they didn't match the
13 projectile to the gun even yet. What they did is
14 that they had another projectile which they got out
15 of somebody's tree. They got it out of a tree of one
16 of the witnesses that claims that his gun was stolen,
17 and they are saying that these two projectiles
18 match.

19 Well, there can be considerable question as to
20 whether the first projectile was actually found in
21 the store or placed-- or not the first, but the
22 second-- or placed in the store by someone after the
23 time of the incident. What an expert like Mr. Balash
24 should tell us is whether or not the damage to the
25 projectile is consistent or inconsistent with the
26 kind of path that the projectile would have had to
27 take to wind up being shot down through a woman's
28 head, to come up off the floor, and then to hit an
29 object and to go into a, essentially into what was a

1 mattress, you know, which was not on the floor but,
2 you know, at least the point it was not all the way
3 on the floor but elevated a bit from the floor.
4 He can testify; he can see and tell us about the
5 blood, whether or not it would have been, whether it
6 was characteristic, this blood was-- customarily that
7 blood would have been on this kind of projectile.
8 There was no blood on the projectile in this case.

9 He can also, of course, confirm or
10 dis--unconfirm or contest whether or not these two
11 projectiles actually matched each other. He can also
12 testify about the crime scene and give us the
13 likelihood of the absence, of them not being able to
14 find any other usable projectile, you know, in this
15 incident.

16 Also, as far as a question of, I believe that
17 Mr. Balash - even though I didn't have him address
18 this in my conversation with him, and he will put it
19 in his affidavit - can speak to us about the paraffin
20 test. We used to call them paraffin tests. I don't
21 know what they call it now, but the test which was
22 used on this Defendant to suggest that he had some
23 kind of residue on his hand which could have come
24 from the shooting of a firearm.

25 We say that whatever was allegedly found on the
26 Defendant did not come from a firearm, and in fact,
27 there is a number of other places it could have come
28 from, and even in some instances more likely came
29 from. That is testimony which will directly contest

1 the testimony that was given at trial from my
2 understanding by the State's expert who said that the
3 only place that this could have come from was from a
4 firearm, which was some very incriminating testimony
5 against the Defendant at trial.

6 So we are absolutely, as far as I see, entitled
7 to an expert. The only thing that we don't have here
8 is a signature on an affidavit, and that can be
9 cured--

10 **BY THE COURT:** --Well, the affidavit doesn't
11 concern me.

12 **BY MR. LUMUMBA:** Okay, all right. So those are
13 the things that I would say as far as Mr. Balash is
14 concerned, or Balash, however you pronounce his
15 name.

16 **BY THE COURT:** Do you want to address him first?
17 Do you want me to talk to you about him first?

18 **BY MR. LUMUMBA:** Yeah, I want to talk to you
19 about him first.

20 **BY THE COURT:** Okay, what is he going to cost?

21 **BY MR. LUMUMBA:** Well, he is going to cost
22 transportation and-- he, I think he said \$500. He
23 charges \$500-- well, \$300, I believe he said, to do
24 the initial report. Okay. And I think the total fee
25 not counting transportation, as I recall it, is \$700
26 to \$750.

27 **BY THE COURT:** The total fee?

28 **BY MR. LUMUMBA:** Not counting transportation and
29 housing. He has got-- you know what I'm saying? He

1 has got to be brought down here and sent back. That
2 is an airplane ticket, but other than that, it's
3 \$750. I think that's what, I figured it out, we are
4 talking about less than \$1,500.

5 **BY THE COURT:** Okay.

6 BY MR. LUMUMBA: Now let me say that this is
7 what I recall at this time. I will ask him on this
8 if this is very important to the Court. I will find
9 out about that and bring back to the Court and let
10 the Court know with specificity. But I forgot, I
11 neglected to tell him to put that in the report.

12 **BY THE COURT:** That is one of the factors I am
13 required to consider. You are going to need to get
14 something in writing from him including what an
15 estimate of what his--

16 BY MR. LUMUMBA: Housing.

17 **BY THE COURT:** Well, yeah, I have got a pretty
18 good idea about what that is going to cost in
19 Tupelo. That is going to run him about 60 or 70
20 bucks, and they have got an airport in Tupelo. He
21 may go to Memphis, whatever. You work out that
22 transportation part of that, and let me, I want to
23 know what that figure is. He needs something in
24 writing to me telling me what it is going to cost.
25 And giving it to me by the hour is going to make it
26 hard for me to decide. I need a bottom line is what
27 I need.

28 BY MR. LUMUMBA: You need a bottom line.

29 **BY THE COURT:** In other words, if it's \$1,500,

1 then that is something I can take into account.

2 BY MR. LUMUMBA: What is his maximum fee?

3 BY THE COURT: Right.

4 BY MR. LUMUMBA: Okay, well, I will find that
5 out.

6 BY THE COURT: And that is a major consideration
7 as to whether I appoint one. So, you know, you need
8 to talk to him along those lines, and I take into
9 consideration he is all the way in Michigan. Now it
10 might behoove you to see if you can't find somebody
11 closer.

12 The other, the other question I have got if I do
13 this, and I'm going to withhold ruling on a
14 ballistics expert until you get me that other
15 information, but the other thing that I have some
16 concern with-- I have no problem about getting almost
17 everything that he wants in this letter. All of
18 those things can almost be furnished by copies and by
19 discussions with the ballistics expert at the crime
20 lab. The problem, I am not going to allow that
21 bullet just to wander around.

22 BY MR. LUMUMBA: Oh, yeah. He has got to come
23 here and look at it.

24 BY THE COURT: Yes.

25 BY MR. LUMUMBA: There is no question about
26 that.

27 BY THE COURT: Okay. Give me that information,
28 and I will rule on that when you do.

29 BY MR. LUMUMBA: All right, I will get you

1 that. The second expert I would like to discuss is,
2 this expert is named Ed Davis. He sent me a separate
3 resume' and a letter, and I'm not sure whether I
4 handed that to the Court because it was not attached
5 to the Motion.

6 **BY THE COURT:** I don't think I have seen that
7 one.

8 BY MR. LUMUMBA: He sent me a cover letter too.
9 Let me see if I can find it right quick.

10 (Hands document to the Court.)

11 **BY THE COURT:** Okay.

12 BY MR. LUMUMBA: This is a cover letter that was
13 sent.

14 (Hands another document to the Court.)

15 BY MR. LUMUMBA: He obviously had difficulty--

16 **BY THE COURT:** --I have seen it.

17 BY MR. LUMUMBA: --had difficulty with my name.
18 That person Joe, whoever he is, doesn't exist. That
19 is me but--

20 **BY THE COURT:** --You are probably like me. You
21 probably have that trouble from time to time.

22 BY MR. LUMUMBA: Right, right. But essentially
23 this expert deals with footwear. Now I haven't had a
24 chance to do an in depth review of the transcript on
25 that issue because the transcript, you know, is of
26 the whole trial. I have talked to prior counsel, and
27 they seem to think that although the expert did not
28 make a positive identification of the shoe print as
29 coming from the shoe that they were trying to

1 associate with the Defendant, he did indicate that it
2 was a shoe which is very much consistent with that
3 imprint. Now, and he seemed to be reluctant to say,
4 according to what they tell me-- that there were
5 probably any number of shoes, millions perhaps, which
6 would have been consistent with that print, even
7 other brands which could have been consistent with
8 that print.

9 Now this expert in my discussion with him
10 indicates that that is probably the case, though he
11 doesn't know because as he goes in his little letter,
12 he said he is going to give it to me like it is,
13 whatever. But I believe having done cases like this
14 before involving, actually I think a Fila shoe.
15 Actually, it was a Fila shoe we are talking about,
16 that there are all kinds of brands which leave
17 indications which may be like Fila. In fact, there
18 is even some copycat brands. I have talked to Fila
19 Company before, and they have told me the same
20 thing.

21 So I think that this man's testimony would be
22 important to me to distinguish, to indicate that-- he
23 may be able to tell me that this shoe is not
24 consistent. I don't know that because he hasn't
25 looked at it, okay, but I at least want him to have a
26 chance to look at it to say whether he will say that,
27 to see whether that is the case. But even if it is
28 consistent, we certainly need to broaden the universe
29 of people who could have left that print or shoes

1 that could have left that print because it is also
2 not clear that this shoe belonged to the Defendant.
3 But that is the State's contention, and they have
4 some proof in that regard. They are putting the
5 shoe box in the house and all that kind of stuff,
6 okay.

7 So, and he is an expert on the serial number,
8 you know, the matching of the shoe with information
9 that is on the box. Now I don't-- I say serial
10 number. That is probably not what they use. I don't
11 remember what they use, but there is some way from
12 the box to determine what kind of shoe was in the
13 box, what I think color, might be able to tell the
14 color; may be able to determine type, you know, there
15 is a certain type, and there are a number of types
16 and things of that nature. So he can share with us
17 whether or not the shoe that was in the box, the box
18 that was found, is consistent with the shoe that they
19 claim made the print.

20 If I remember correctly, they didn't even have
21 the shoe in this case. They had a shoe box, and then
22 they had a print. So that is just a lot of grounds;
23 that is just a lot of room for speculation, and it's
24 prejudicial speculation to us unless we can have
25 somebody reasonably come in and explain it. We don't
26 need to be at the mercy of a prosecution expert who
27 poses and poises his testimony in a way which fits
28 the prosecution and which does not embrace the
29 options in the case. And that is why we need an

1 expert on the shoe print or footwear; that's what
2 they call it.

3 **BY THE COURT:** All right, the Court finds on
4 that-- you were through? I'm sorry.

5 **BY MR. LUMUMBA:** (Mr. Lumumba nods his head.)

6 **BY THE COURT:** The Court finds on that
7 particular issue that the expert testified as to
8 pictures of the prints he took. He observed and he
9 didn't analyze them, but he observed the print that
10 it made in the blood. He determined later that that
11 came from a Fila shoe and from a brand name. One way
12 he determined that was he examined a Fila shoe that
13 came from a box that matched the box in the house
14 that the Defendant was staying in. And he took that
15 new shoe and looked at it in relation to the print
16 that was made in the blood at the scene. And it then
17 was a question of fact for the jury to determine. I
18 mean he never said that was the shoe. He said it was
19 similar is all he said. He did, he bought some
20 shoes, as I stated, that compared-- all those things
21 can be done without the necessity of an expert. The
22 Defense has access to be able to do the same thing
23 that this man did without the necessity of an
24 expert. So I'm going to deny an expert on the shoe
25 print.

26 **BY MR. LUMUMBA:** The final motion which I have
27 as far as the expert witnesses are concerned is a
28 motion which, for an investigative expert on both
29 fact and mitigation. Brenda Lewis, you should have

1 your--

2 **BY THE COURT:** Yes, sir.

3 BY MR. LUMUMBA: Is a person who has worked in
4 this state before on a case. She is in Alabama. If
5 I'm not mistaken, she is at the University of Alabama
6 which would be like Tuscaloosa area. She is--

7 **BY THE COURT:** --I have read her
8 qualifications. If you want to put that in the
9 record, that is fine, but I mainly need to know what
10 you want her for.

11 BY MR. LUMUMBA: Yeah, well, I need her to
12 compose for us a composite profile on our client,
13 associated with specific relatives, friends, if he
14 has had any associations with various or other kind
15 of experts, like doctors or ministers or whoever, so
16 we can get any kind of mitigation that would be
17 relevant at his presentation at a sentencing hearing
18 should we have to have a sentencing hearing. I don't
19 know if that was done before or not. I haven't
20 gotten to that point in the transcript. But that is,
21 we are told that it is virtually malpractice for the
22 attorney in a death penalty case not to do that. So
23 I think it is very important to be able to put on a
24 presentation at the sentencing portion, if it comes
25 to that, because we have to have that prepared.

26 Secondly-- she does that; she does that all the
27 time. She has done that in many, many different
28 cases. Secondly, she may or may not testify
29 herself. It depends on what-- she will have some

1 contact, discussions with the Defendant, so she would
2 be in a position to testify perhaps to what his, what
3 his intentions are further in life, what kind of
4 person he would be in life. She obviously can't
5 testify of personal knowledge of any of the
6 background. But she would be lining up witnesses for
7 that. She wouldn't really be doing that.

8 Secondly, the facts. We are having problems,
9 and I have a letter from Mr. Freelon pointing out
10 that he has been up to, spent a whole day looking for
11 various witnesses especially witnesses who are, two
12 witnesses who it's alleged to have talked to my
13 client while he was in jail. And we need to have
14 somebody who can consistently, other than attorneys
15 who are preparing the case and doing other things
16 that we need to do, tracking down these fact
17 witnesses, finding these fact witnesses and putting
18 them in a position where we can talk to them. She is
19 an expert at that. She has done that for many
20 years.

21 And you have, if I remember right, I think the
22 names of witnesses are mentioned. I believe you have
23 got over 30 different people who I don't know if they
24 all were called at trial. I can't remember that, but
25 there certainly were more than 30, many more than 30
26 who were involved in allegedly seeing this Defendant
27 at some place or not seeing him some place. You have
28 the guy who is claiming that his gun was stolen from
29 his car. You have people who know this guy. You

1 have people that know possible motives he might have
2 for making that kind of statement. You have people
3 who know the people that were in jail who allegedly
4 talked to my client and know what motives they may
5 have. You have people who know various persons that
6 have testified to seeing my client on the street.
7 All of these people need to be touched and talked to,
8 and an expert on this would help.

9 Now it's not just enough to have an attorney do
10 it, even if the attorney had time do it. An attorney
11 can't testify generally speaking, which means that if
12 a client or if a witness said something to me which
13 compromises his testimony as he is putting it on at
14 trial, I can't get back up on the stand and say,
15 well, he told me this, and now he is changing his
16 statement. I'm going to need an investigator to say
17 that.

18 And I have virtually almost had no trial where I
19 didn't use an investigator in that way or was on the
20 verge of using an investigator and only didn't use
21 them because the person either unexpectedly or where
22 we just didn't know. It's just a perilous situation
23 where the person finally said what we expected, what
24 we knew to be the truth or what they told to the
25 investigator. But in almost every case, almost every
26 case I have ever tried in a murder case there has
27 almost always been someone who is shifting their
28 testimony to some extent between the discussions
29 with pretrial investigators and their testimony in

1 court.

2 And I see evidence in this case that some people
3 have shifted their testimony from the time that they
4 were talked to by his predecessor lawyers and this
5 time. So we expect more of that to take place. And
6 I think we are entitled to have an investigator, and
7 although the investigator may be working for us, the
8 investigator doesn't know him, doesn't have the kind
9 of association with him that his own attorney would
10 have.

11 So I think an investigator would have more
12 credibility if we can put an investigator on the
13 stand to testify to any contradictory or conflicting
14 statements as opposed to even having to call one of
15 his predecessor attorneys, which at this point we
16 probably may have to do anyway. But there are other
17 things that these attorneys can't testify, so we
18 would still need this investigator for.

19 So finally, discovering facts, bringing these
20 facts to our attention, putting us in touch with
21 witnesses, being present during interviews so that
22 she can be a source of impeachment should that
23 opportunity or should that need be manifest.

24 **BY THE COURT:** Okay. You don't have any
25 information about what she is going to cost either,
26 do you?

27 **BY MR. LUMUMBA:** Yeah. She has it in her little
28 thing.

29 **BY THE COURT:** I'm sorry. I missed it.

1 BY MR. LUMUMBA: Let me see. Brenda Lewis. She
2 says the fee rate for conducting that type of
3 investigation--

4 **BY THE COURT:** --I have got it. It shows, let
5 the record reflect her fee is \$200.00 retainer;
6 \$300.00 for expenses.

7 BY MR. LUMUMBA: Wait a minute. She doesn't say
8 per hour. Oh, \$60 per hour.

9 **BY THE COURT:** Per hour and 32 cents a mile plus
10 related expenses, lodging, long distance calls and
11 copying. The Court notes that she is from the State
12 of Alabama. Okay. Are you ready for me to rule on
13 that?

14 BY MR. LUMUMBA: Yeah.

15 **BY THE COURT:** Okay. The Court finds that one,
16 she is too far away. There are numerous
17 investigators in this state that would be available
18 at a less cost than what she is. The second thing is
19 this case has been tried once. There is a complete
20 transcript of it. The State, all the witnesses that
21 the State intends to call testified; they in essence
22 now have given their deposition. All discovery has
23 been furnished, that there is nothing in my opinion
24 for a criminal investigation, investigator to do at
25 this point. Therefore, I deny the Motion for
26 Criminal Investigator.

27 She is also listed as a mitigation-- and the
28 reason it was listed as a mitigation expert, I think
29 Mr. Lumumba said maybe she was not an expert in that

1 field, but she has testified in that regard--

2 BY MR. LUMUMBA: --No, no. She is an expert in
3 that field.

4 BY THE COURT: Okay. Well, the Court has some
5 doubt as to whether that is a field in which there
6 can be expertise and would have to see something to
7 substantiate that. The other thing is most of the
8 stuff that she would testify in that regard is
9 available to Mr. Flowers, to his family. They can
10 supply that information to the attorneys and let them
11 compile it as they see fit.

12 So I deny that particular Motion.

13 BY MR. LUMUMBA: Can I just get one point for
14 clarification?

15 BY THE COURT: Sure.

16 BY MR. LUMUMBA: Judge, this case has not been
17 tried to the Defendant's satisfaction. We are here
18 right now-- the case that he just finished was a
19 guilty verdict. So obviously, there was something
20 missing from our point of view, so the Court puts us
21 in a seriously compromised position by saying that we
22 have to rely upon the transcript which resulted in
23 him being sentenced to death.

24 I believe that there is a number of things for
25 an investigator to do, and if these things would have
26 been done in the first trial, then he may not be
27 sitting here. But I mean, and that is not to say
28 anything about the attorneys. They needed an
29 investigator as far as I can see from the records.

1 They never had one, and I would just say that the
2 Court, I would invite the Court to read some of those
3 cases we cited in the prior motion.

4 But this is a very serious matter, and I almost
5 don't-- if the Court wants us to look for somebody
6 that doesn't have to drive from Tuscaloosa, which is
7 not that far away really. In fact, if you have a
8 case in Lee County, a witness coming from the Gulf
9 Coast or from Jackson might be driving just about as
10 far as a witness coming from Tuscaloosa which is at
11 the University of Alabama, which is not that far on
12 the other side of Meridian.

13 But in any event, you know, it compromises our
14 situation by putting us at the mercy of a transcript
15 which has already resulted in Mr. Flowers' death
16 sentence. I can't see how anyone can see that as
17 satisfactory. And I also say this to the Court. You
18 know, we cannot penny pinch around these death
19 penalty cases. I mean I don't care what people's
20 view is about budget and all this kind of stuff. If
21 you are a state and you take the responsibility where
22 you say you are going to put people to death; then at
23 that point money becomes no object.

24 A person's life is much more important than any
25 dimes you can spend, and we have seen case after case
26 unfold where years later people who have been on
27 death penalties, sometimes people even executed, have
28 come back and saw they are innocent. This here is an
29 entirely circumstantial evidence case, absolutely

1 circumstantial evidence case, and I think that the
2 need for the investigator is even more manifest
3 because of these things.

4 **BY THE COURT:** In the first place, it's not a
5 circumstantial case if those gentlemen from the
6 Leflore County Jail testify as they testified
7 before. Then it's a direct evidence case. The other
8 thing is the Court is aware of numerous criminal
9 investigators within the State of Mississippi, and
10 the Defendant is not entitled to have, to go out of
11 state and pick one just because that is the one he
12 wants.

13 But anyhow, the Court has researched this
14 matter, and the law is fairly clear that the
15 defendant is not entitled to a criminal investigator
16 except in rare instances to insure a fair trial. The
17 Court feels from having sat through one of these
18 trials and the fact of what is in the transcript and
19 what is involved in this case that a criminal
20 investigator is not required in this case to be paid
21 for from public funds. And you are entitled to have
22 a criminal investigator. I just don't think there is
23 sufficient reasons to require the county or the state
24 to pay for that criminal investigator.

25 Okay, were there any other experts other than
26 what we have talked about?

27 **BY MR. LUMUMBA:** No. Is your ruling that we
28 can't, that you won't appoint an investigator even if
29 they come from this state? Is that your ruling?

1 **BY THE COURT:** Yes, sir. That's what it is.

2 **BY MR. LUMUMBA:** The only other thing on this
3 would be is that we would seek an opportunity to
4 bring before this Court any other need for an expert
5 which might come to our attention. But, you know,
6 while we--

7 **BY THE COURT:** --You have the right to reserve
8 that. As we get on down toward trial date though,
9 the closer we are to trial date may dictate as to how
10 I rule on that. You understand that.

11 **BY MR. LUMUMBA:** Uh-hum.

12 **BY THE COURT:** So you can reserve your right to
13 file it, and I reserve my right to rule on it. How
14 about that? All right. Okay. Let me go out; I'm
15 going to-- I'm not going to announce what we have
16 done in here, but I'm going to announce my ruling.
17 Then we will take a break for lunch and start back at
18 1 o'clock.

19 (THE COURT THEN RETURNED INTO OPEN COURT, AND
20 WITH ALL COUNSEL AND THE DEFENDANT PRESENT, MADE THE
21 FOLLOWING ANNOUNCEMENT:)

22 **BY THE COURT:** Okay, on the question of
23 appointment of experts, let the record reflect that
24 Mr. Lumumba, on behalf of the Defendant, has
25 withdrawn his motion to have a psychiatric or
26 psychological expert appointed in this case. So that
27 is not before the Court. The only two things that
28 are before the Court are a ballistics expert and a
29 criminal investigator. The criminal investigator

1 that is proposed would also testify as a mitigation
2 expert. The Court has denied that Motion.

3 And on the question of ballistics expert, the Court
4 has taken that under advisement. Mr. Lumumba has to
5 furnish me certain other particular information
6 before I rule on that.

7 Okay. Let's take a break until 1 o'clock. (Pause)
8 I'm sorry; there is one other. Wait just a minute,
9 y'all. I'm not through. There is one thing I left
10 out. There was also a motion for a shoe print expert
11 in this case, and I denied that. Okay. Y'all are
12 free to go.

13 (Mr. Billy Gilmore approached the bench.)

14 **BY THE COURT:** I can answer that real quick. I
15 will sign your Motion for a Continuance, and I'm
16 going to deny your Motion to Withdraw until other
17 Counsel enters in the case, so y'all furnish me
18 orders to that effect. See y'all at 1:00.

19 (FOLLOWING THE NOON RECESS ON JANUARY 26, 1998,
20 MOTION PROCEEDINGS CONTINUED IN OPEN COURT WITH ALL
21 COUNSEL AND THE DEFENDANT PRESENT. MR. JOHN GILMORE
22 AND MR. BILLY GILMORE WERE NO LONGER PRESENT:)

23 **BY THE COURT:** All right, sir. What do you have
24 next?

25 **BY MR. LUMUMBA:** Judge, I have a discovery
26 issue. We have not been provided-- there were two
27 gentlemen, one named Veal and one named Hawkins who
28 testified at the last trial in this matter, and I
29 think that from the stand, if I'm not mistaken, they

1 indicated that they had sent letters to the Sheriff
2 indicating, I guess, that they wanted to talk to the
3 Sheriff. And this was supposed to have led to their
4 subsequent testifying at trial. We don't have copies
5 of those letters. We would like to have those
6 letters, and we are requesting that the State
7 forthwith produce them. Those letters will, of
8 course, be instrumental in our use for this-- we have
9 a hearing scheduled for today with these witnesses to
10 testify about their statements.

11 If the Court remembers, we moved to suppress
12 their statements. But, you know, I have something
13 else to say about that, about the Sheriff's lack of
14 assistance really in trying to get these people, but
15 I will speak to that in a minute. The real question
16 is we need a copy of the statements that they, or the
17 letters they sent, and so we need to see if the
18 District Attorney has those or have sought those
19 because he was at the last trial too. So he knows
20 they supposed to have sent letters, and we would like
21 to have copies of them.

22 **BY THE COURT:** Do you have--

23 BY MR. EVANS: I don't even know what he is
24 talking about, Your Honor. From my recollection of
25 the trial, one of the two witnesses testified that he
26 came to the Sheriff and told him about it. If there
27 are any notes that were sent, I have not been
28 furnished them or told about them. I have no problem
29 with both of us asking if there are any, but I don't

1 know of any.

2 BY THE COURT: Okay. I can't recall what the
3 testimony was, but you have them-- you do not have
4 them in your possession; is that correct?

5 BY MR. EVANS: Never heard of them, Your Honor.

6 BY THE COURT: Okay. Mr. Evans, I direct that
7 you inquire of the Sheriff of Leflore County if he
8 has such documents, and if he does, take them into
9 your possession and furnish the Defendant with a copy
10 of them. If he wants to look at the original, you
11 may keep the original and furnish him a copy of that.

12 BY MR. EVANS: Yes, sir.

13 BY THE COURT: Is that the Sheriff from Leflore
14 County here today?

15 BY MR. EVANS: Yes, sir.

16 BY THE COURT: Well, we can answer that. Why
17 don't we just put him on the stand right now and see
18 if he has got them? Then we will have a record of
19 it.

20 BY MR. HORAN: He is not back from lunch yet.

21 BY THE COURT: Okay. Well, why don't we make
22 some record, let there be something in the record as
23 to whether or not he has such a document before we
24 leave here today. Okay. All right, sir.

25 BY MR. LUMUMBA: I would call to the Court's
26 attention there for a motion. I filed the Motion to
27 use, to Bar the Use of Certain Aggravating
28 Circumstances, okay?

29 BY THE COURT: All right, sir.

1 BY MR. LUMUMBA: Judge, let me indicate this
2 too. I would like an opportunity before we have the
3 hearing, and I would like to take a short break soon
4 to talk to the witness. There is a witness who we
5 sought to subpoena named Mr. Veal. He is one of
6 these people who were in the jail, and we went to the
7 Sheriffs. We searched for him all day, couldn't find
8 him, went to the Sheriffs and asked the Sheriff where
9 he was. The Sheriff told us he didn't know where he
10 was. All right, now I understand that the Sheriff
11 has actually, somebody at the Sheriff's Department
12 told my partner that they didn't know where he was,
13 didn't know, hadn't seen him and other things which
14 led us to believe they didn't know where he was.

15 In any event, I understand that he is produced
16 here today which is good. That is all well and good,
17 but what we haven't had the opportunity to do is talk
18 to him, so I wanted a short opportunity to talk to
19 him before he gets on the stand. I don't need to do
20 that right this minute.

21 BY THE COURT: Okay. Yeah, I think he is here.
22 As a matter of fact, I think the Sheriff is here now
23 too, but we will go on to this Motion, and then we
24 will come back to that.

25 BY MR. LUMUMBA: Okay, the Motion to Bar the Use
26 of Certain Aggravating Circumstances. That Motion
27 has been presented to the Court in writing, and
28 basically, the District Attorney has revealed their
29 intention to use great risk to many person

1 aggravating circumstance which is part of the
2 statutory aggravating circumstances, the felony
3 murder circumstance, and if I'm not mistaken, the
4 avoid lawful arrest circumstances.

5 There has been, as we indicate, case law,
6 particularly Pope v. State; it was just cited in the
7 brief. That is not a Mississippi case, but it is a
8 Georgia case, and I think we have cited some
9 Mississippi cases -- is that the aggravating
10 circumstances of a knowingly, that the Defendant
11 knowingly created a great risk of death to many
12 persons.

13 "This statutory aggravating circumstance has two
14 components," says the Court, "both of which must be
15 satisfied. First, the evidence must show that the
16 defendant, by his act of murder knowingly created a
17 great risk of death to more than one person in a
18 public place. Second, the evidence must show that
19 this 'great risk' resulted from the use of a 'weapon
20 or device' that is 'normally hazardous to the lives
21 of more than one person.' "

22 "A pistol used in a public place does not
23 necessarily create a 'great risk of death to more
24 than one person.' 'Great risk' does not mean mere
25 possibility, but likelihood or high probability.
26 Firing a gun into a crowd can create a great risk of
27 death to more than one person. Shooting someone from
28 fairly close range does not, by itself, create a
29 'great risk of death' to more than one person simply

1 because others may be in the vicinity."

2 Then they go on to cite various different cases
3 where shooting two people in a public place is not
4 sufficient, although six persons killed and two
5 wounded, that wasn't sufficient in a case, and many
6 other cases which speak to this issue.

7 What they are attempting to do, I think, is to
8 avoid duplicitous charging or duplicitous use of
9 aggravating circumstances. If, in fact, the District
10 Attorney's contention here is the person who
11 committed this crime was indeed doing so because of
12 an intent to commit a robbery, then it becomes in
13 that the people who died as a result of the robbery,
14 the shooting which occurred at the robbery, that is
15 an aggravating circumstance that is sufficient to
16 take to the jury, if they can prove it, in order to
17 ask the jury to come back with a death sentence.

18 However, what the cases seem to suggest is that
19 this aggravating circumstances was not just meant to
20 be a convenient gimmick to charge a person or to
21 sentence a person to death because more than one
22 person died. The thing is it creates a great risk of
23 more than one person. It really does not even punish
24 the intentional killing of more than one person.
25 That is not what-- unfortunately, that-- fortunately
26 or unfortunately, it depends on how you look at it.

27 Intent does not seem to be a real persuasive
28 factor in determining what is aggravating
29 circumstances in the State of Mississippi and in most

1 other states which have the death penalty, because as
2 the Court may well know, you can premeditate
3 someone's murder for a long period of time, lay in
4 wait and absolutely just clearly kill them, and you
5 would not be subject to the death penalty under the
6 current law. Whereas a person who walked into a
7 store and tried to commit a robbery and the gun
8 accidentally went off and killed somebody, they under
9 the statute could be subjected possibly to the death
10 penalty.

11 So the point I'm making there is that it is not
12 the question of intent that these aggravating
13 circumstances are trying to reach. What it is trying
14 to reach is that apparently where a great risk is
15 created like, for instance, in the circumstance that
16 occurred in the bombing, you know, the well known,
17 notorious, infamous, whatever federal case which was
18 occurred, and I don't even remember where it's at
19 right now -- Oklahoma City, where a number of people
20 were killed, the use of a bomb itself is the kind of
21 dangerous instrumentality which should give rise to
22 aggravating circumstance.

23 And so the case law would suggest that that
24 aggravating circumstances cannot stand in this case.
25 The Court has been, had an opportunity to see the
26 proofs at one trial. There was no indication there
27 that the gun was used in such a manner that at the
28 time, every time it was shot it was a great risk to
29 the various different people in the place. What it

1 did show is that different people in the place were
2 maybe intentionally killed. I mean I guess that is
3 possibly, the person who did this shooting could have
4 very well intentionally killed every person in
5 there. That is unclear, but that is possible.

6 But if that is, in fact, what occurred, it
7 definitely is not what the statute is trying to reach
8 with that specific aggravating circumstances.

9 The avoid lawful arrest circumstance should not
10 be submitted to the jury. There is absolutely no
11 evidence to suggest that this crime was committed
12 because anybody was trying to avoid a lawful arrest.
13 It is in number one. And number two, the avoiding of
14 a lawful arrest must be some element different from
15 the very killing which results because of the
16 commission of the robbery. If, in fact, it's the
17 same thing, then it's a duplicitous charging. It's
18 an attempt to use two aggravating circumstances to
19 beat on a person, to give a smorgasbord of choices to
20 the jury which thereby it becomes duplicitous and
21 deprives the Defendant of his right not to be, to be
22 duplicitously charged and/or sentenced with basically
23 the same act.

24 They have put in a different frame of reference
25 to give the jury; you can pick from this; you can
26 pick from that. Cases have said that that is
27 improper.

28 So what I would say is that in this case there
29 is no showing that there is any kind of independent

1 act which would show that this person who committed
2 this act actually was trying to avoid any kind of
3 arrest. In cases like State v. Reese, which is cited
4 in the brief, the only evidence in this case that
5 that was the case is the death itself or the deaths.

6 Several other cases are cited, Ladner v. State,
7 which is a Mississippi case decided in 1991, and it
8 says that, "The aggravating circumstance that the
9 capital offense 'was committed for the purpose of
10 avoiding lawful arrest' should not be used unless
11 clearly supported by the evidence." And that's not
12 the case here again.

13 Finally, they use a thing, they say that the
14 robbery was committed for pecuniary gain. That is in
15 the announcement of aggravating circumstances that I
16 received from the State. That's what it says, which
17 appears to be a fairly sly way of slipping the
18 pecuniary gain aggravating circumstance into the
19 equation.

20 The case again of Ladner v. State very clearly
21 makes it clear that the pecuniary gain is only used
22 if there is some additional evidence other than the
23 robbery itself to make this, to make this unique, to
24 separate it, to make it distinct from any other
25 robbery case where someone dies.

26 "In practically every case," the case says,
27 "where there is a robbery/ capital murder, two
28 aggravating circumstances used in the past are that
29 the homicide was committed while: Engaged in robbery

1 and for pecuniary gain. Our Courts should closely
2 scrutinize those two aggravating circumstances in the
3 future, and omit using pecuniary gain except in
4 clearly applicable circumstances. One aggravating
5 circumstance is sufficient to satisfy the statute."

6 "Therefore, we hold, and state to trial judges
7 and prosecutors, that where the indictment charges a
8 robbery/ murder capital offense and robbery is
9 designated as an aggravating circumstance, pecuniary
10 gain should not be used as an aggravating
11 circumstance unless clearly supported by the
12 evidence. For instance, A pays B \$1,000 to kill C,
13 who has a wallet full of money. B robs C and kills
14 him. There are two aggravating circumstances" here.

15 In other words, there was an initial motive to
16 kill for money which was being paid by a third
17 person, and then what happens, he actually robs the
18 person too. So that is two different situations
19 where the person was involved (a) in trying to get
20 paid for the killing, something separate from the
21 robbery, and (b) because he was trying to get the
22 money from the robbery.

23 That's what the Court said in Ladner v. State,
24 and so the Court is trying to say in as many
25 different ways as they possibly can, and they have
26 been saying so quite forcibly reversing cases, you
27 know, quite a bit. Over 50 percent of death penalty
28 cases in the State of Mississippi have been reversed,
29 you know, since the death penalty has been

1 reinststituted in the state, at least the sentencing
2 phase of it.

3 So like what I'm saying is that in order to
4 avoid that and to follow the law, I think that that
5 aggravating circumstance also should not be allowed
6 to stand.

7 I am also not convinced that there is sufficient
8 evidence on the third or fourth aggravating
9 circumstance which is the robbery itself. I was not
10 present at the trial, but I would say, you know, that
11 we have reason to believe that there is information
12 lacking in the proofs there that the robbery was
13 actually for pecuniary gain-- not for pecuniary gain,
14 but that there was actually a robbery, that there was
15 actually a robbery and that that was why the killings
16 occurred. We don't know that they didn't occur for
17 some other kinds of reasons.

18 But in any event, we would move to preclude them
19 from going into all four of those aggravating
20 circumstances: Pecuniary gain clearly, to avoid
21 arrest, robbery, and which is actually a felony
22 murder circumstance, and the final one which they
23 announce which was, as I have--

24 BY MR. HORAN: Great risk to others.

25 BY MR. LUMUMBA: A great risk to others
26 circumstance. I don't think any of them applies
27 here.

28 BY MR. EVANS: Your Honor, I'm going to go ahead
29 and address them even though I think this is a little

1 premature at this time. But since we have gone this
2 far, I will address each of them.

3 As to the first argument opposing Counsel gave
4 as to the great risk of death to many persons, the
5 law is clear in Mississippi. Now it may be different
6 in Georgia in the cases that he cited, but in
7 Mississippi the law is clear that where you have a
8 murder where more than one person is killed, you can
9 use that aggravating circumstance.

10 There have been several cases. Two of them are
11 Jackson v. State and Wheeler v. State which were
12 almost identical to this case where people went in,
13 committed robberies, killed more than one person, and
14 our state Supreme Court said that aggravating
15 circumstance was proper.

16 As to the avoiding lawful arrest, Taylor v.
17 State is probably the most in line case with that.
18 In this particular case we have the Defendant making
19 a statement to a person in jail that he had to kill
20 all these people because he couldn't leave any
21 witnesses. Now if that is not independent proof that
22 it was done to avoid lawful arrest, I don't know what
23 could be.

24 As to the pecuniary gain and the robbery, I
25 think if the Court will read the cites that were
26 given in that, they do not say what opposing Counsel
27 said. The only thing that our Courts have ever said
28 about using those in Jenkins v. State and Wiley v.
29 State, the Court said that they should not both be

1 given separately. And more specifically, in Irving
2 v. State, our State Supreme Court said the way that
3 instruction should be given when a person is killed
4 during a robbery is that the capital offense was
5 committed for pecuniary gain during the course of a
6 robbery, which is the same instruction that we gave.

7 **BY THE COURT:** The Court finds that this Motion
8 is premature. First, there must be a determination
9 of guilt by a jury before we even get to that point.
10 Then the instructions I give will be somewhat based
11 on what the facts show, what the evidence shows at
12 the trial. And so I am unable to rule on that at
13 this time positively until I see the facts. It is
14 overruled as being premature.

15 Mr. Lumumba, you, of course, are entitled to
16 resume those objections if we get to that point in
17 this trial.

18 **BY MR. LUMUMBA:** I have filed before the Court a
19 Motion to Place Additional Questions on the Jury
20 Questionnaire. The questions that we feel need to be
21 placed on the questionnaire in order to determine
22 what kind of prejudice the jurors may have been
23 affected by are questions which have to do with
24 juries, potential jurors' association with the prior
25 trial, whether it be by way of direct participation
26 as jurors, by way of relationships with the people
27 who participated.

28 For example, there were-- I don't know how many
29 people are in Lee County, but I suspect it's probably

1 around about 28,000 or so. Am I right about that?

2 **BY THE COURT:** I would say at least that many;
3 yes, sir.

4 BY MR. LUMUMBA: But whatever. Every individual
5 is generally related to a large number of
6 individuals. You know, I think that the formula is
7 something like any individual, you know, you have to
8 in terms of a given community, you sometimes can
9 multiply that by 10, 15, or more or add 10 or 15 more
10 people to that in terms of who they come into contact
11 with on a regular basis.

12 So I think that the Court summoned over 600 people,
13 if I'm not mistaken. I know they summoned a large
14 number of people to come in for the last trial.

15 **BY THE COURT:** 400, I think.

16 BY MR. LUMUMBA: Pardon?

17 **BY THE COURT:** 400 or 450.

18 BY MR. LUMUMBA: 400 people. Okay, and then you
19 have got to deal with those 400 people, their
20 brothers, sisters, mothers, cousins, aunts, friends,
21 talked to down the street kind of thing. We need to
22 be able to tell precisely to what extent they have
23 gotten any knowledge about this case from other
24 individuals who may have been directly involved.
25 This is not just a case that happened to have been
26 tried in Lee County. This is a case where somebody
27 received a death penalty in Lee County which
28 dramatically affects the level of conversations and
29 the level of opinions as far as people in Lee County

1 are going to have about the case.

2 The case appeared frequently in the media,
3 especially in the electronic media, I am told. The
4 paper-- I understand it also appeared in papers which
5 were printed in that area. So we have questions that
6 deal not only with who they knew on the jury, but
7 also questions that deal with who they may have
8 known-- I mean how they may have come to the
9 knowledge of the case through the media.

10 Finally, we have critical questions on race.
11 This is a case where three whites were killed along
12 with a black person. A tragedy, no doubt, but a
13 black defendant is accused in this case. Although it
14 is conveniently sometimes slips from the memory of
15 litigators, depending upon which side of the case
16 they are on, this has always been a critical element
17 in cases. Most attorneys, ninety percent of the
18 attorneys you talk to in the back rooms, back in your
19 chambers or over at the bar or at their offices, will
20 happily admit the critical question of race in a
21 decisive nature of racism and bigotry and just
22 various different levels of prejudices, be they
23 benign or mean-spirited, in the way that they come to
24 impact on juries.

25 So I think that it is very important, you know,
26 that we be able to sensitively address this issue
27 with the jurors and see if they have any racial
28 proclivities or racial proclivities which would, in
29 fact, impact upon their ability to be fair and

1 impartial jurors. So those are the types of
2 questions that I suggest that we add to this
3 questionnaire. In fact, we move that we add to this
4 questionnaire because we think it is important to
5 receiving a fair trial in this case.

6 **BY THE COURT:** Mr. Evans.

7 BY MR. EVANS: The specific questions that he
8 has placed in here that he is asking for, we have
9 strong objections to a lot of them. The general
10 topics that he has referred to, I don't have any
11 problem if it's asked in the proper way. But if a
12 juror takes this questionnaire, the first thing they
13 are going to have to do is call the Clerk's Office
14 and find out who was on that other jury. They are
15 also going to have to call the Clerk's Office or try
16 to go back and find newspapers or something to find
17 out what race the Defendant is.

18 This is, these questions are directed solely for
19 the purpose of causing the people that get the
20 questionnaire not to be able to serve. The general
21 questions I would have no problem with, but when you
22 start going into the type of questions that are in
23 here, it's going to cause more problems than we can
24 imagine. And the questions themselves implicate
25 racial biases. I have no problem with asking the
26 jurors if they have any racial biases toward anyone,
27 regardless of their race. But when you start
28 singling out, "Can you convict a black person for
29 killing a white person?" that is not proper.

1 I don't think our Supreme Court would ever say
2 it's proper. As a matter of fact, they have said
3 that race should not interfere with any trial.

4 So as far as the general questions, I don't have
5 any problem with that, but when we start getting
6 specific and start asking questions that is going to
7 require the jury to do research and find out who
8 served on a jury, to find out whether the Defendant
9 is black or white, all that is doing is trying to
10 create problems.

11 BY MR. LUMUMBA: I don't think that there is any
12 studies that would justify those kind of conclusions,
13 that asking people questions will generally cause
14 them to start calling the Clerk or whatever. I think
15 that if we wanted to put a sentence or a phrase in
16 here which indicated to persons that they should
17 answer these questions based upon their present
18 knowledge, and the questionnaire is not calling for
19 any research or investigation, then I have no problem
20 with it.

21 These questions are clear and to the point, and
22 the only person that they would shake is a person who
23 didn't want these kinds of things to be found out.
24 You can be so securitas about asking a question as to
25 find out nothing if you try hard enough. And so the
26 question is direct. You know, do they know what the
27 race of the Defendant is in the State v. Flowers
28 case.

29 Do you have any racial bias or prejudice against

1 black people? I don't see why there could be
2 anything simpler than that. Can you be a fair and
3 impartial juror in a case where a black defendant is
4 accused of killing one or more persons who are white?

5 Do you believe because a person is accused of a
6 crime, he is probably guilty? Do you believe that a
7 black person accused of a crime is more likely to be
8 guilty than a white person accused of a crime? Now I
9 can't understand why anybody would not want that
10 question to be asked.

11 And my experience is, is that you can get a
12 surprising amount of honesty, you know, in asking
13 these questions when you send them to people. And
14 they will be honest with you. If they don't have a
15 problem with folks based upon racial distinctions,
16 then they tell you. If they do, sometimes they will
17 tell you that. So I think that at least it's the
18 initial inquiry that needs to be made in order to
19 give us the proper basis for questioning at the voir
20 dire stage, and also to see, this will also help to
21 reflect and see what kind of bias or prejudice which
22 might exist in the community altogether on these
23 issues.

24 And I have seen questions much more specific
25 than these asked in many courts in many places in
26 this state. The one that goes out in Hinds County is
27 much more direct in death penalty cases. So I don't
28 see where there is a problem here.

29 **BY THE COURT:** Okay. One, the questionnaire is

1 just something that the Court allows. It is
2 discretionary in the Court's opinion. I mean the
3 Court's decision is based on its own discretion. I
4 allow that so that you will have some basis to
5 understand about these people before you get to the
6 point of voir dire. It does not take the place of
7 voir dire.

8 As in the first case, when the summons is
9 issued, it will not have a reference to the State of
10 Mississippi versus Curtis Flowers on it. It will be
11 blank to the extent that they won't know what they
12 are being summonsed for. The jury questionnaire will
13 be the same way. I think the questions that are
14 directed at that particular case would have, could
15 have a bearing on folks that knew nothing about it,
16 then make an inquiry into it which would jeopardize
17 their ability to serve as fair and impartial jurors.

18 I'm not going to allow specific questions. I'm
19 not going to allow question 1. I'm not going to
20 allow question 2. I'm not going to allow question 3
21 on the basis it asks did you serve on a jury in
22 1997. If they served on a jury in 1997, they are not
23 qualified to serve on this jury to begin with by
24 statute. I'm not going to allow 4 because that is a
25 direct question. I'm not going to allow 5 for the
26 same reason; 6, for the same reason; 7, for the same
27 reason; 8, for the same reason; 9, for the same
28 reason. 10, I will allow.

29 BY MR. EVANS: Your Honor, may we add on 10

1 anybody that has, wanted to know if anybody has any
2 racial bias or prejudice against black or white
3 people.

4 **BY THE COURT:** Okay.

5 BY MR. EVANS: Because I think the State would
6 be entitled to know that also.

7 **BY THE COURT:** I will allow that amendment. 11
8 again becomes specific. I'm not going to allow it.
9 12 is a question that I will ask at voir dire. It's
10 no necessity for it being asked prior to voir dire.
11 And 13 is not an appropriate question for this
12 questionnaire. It may not be an appropriate question
13 for voir dire. I will pass on that when I get to
14 it.

15 Now as I recall, the first--

16 BY MR. LUMUMBA: -- Why wouldn't that question be
17 appropriate for voir dire?

18 **BY THE COURT:** I haven't ruled that it's not. I
19 said it might not be. 14. Isn't there a question
20 in the original questionnaire about the death
21 penalty?

22 BY MR. EVANS: Yes, sir.

23 **BY THE COURT:** More than one, isn't it?

24 BY MR. EVANS: Just one. That's all the Court
25 would allow last time is one question.

26 **BY THE COURT:** Okay, I'm going to allow the one
27 that is in there. So I will deny 14 and 15 as being
28 a question that is already included in the
29 questionnaire. Those are matters for, mostly for

1 voir dire. Okay. What is next?

2 BY MR. LUMUMBA: Could the Court go over those
3 again, please?

4 BY THE COURT: All right, sir. I'm going to
5 deny all of them but 10, and we are going to allow 10
6 with the amendment to adding white people.

7 BY MR. LUMUMBA: I have filed a motion to, or a
8 notice actually, to adopt the motions by prior
9 Counsel in the prior case which preceded us. Those,
10 of course, would be the written motions, the ones I'm
11 aware of, except for the Motion to Change Venue. And
12 so amongst those motions, you have a--

13 BY THE COURT: --I'm going to allow that unless
14 y'all have got any disagreement with that.

15 BY MR. EVANS: Your Honor, they are already in
16 there. They were all filed in all causes.

17 BY THE COURT: I think they are already in the
18 file.

19 BY MR. EVANS: So they are already in there.

20 BY THE COURT: But I will sustain that Motion.
21 I will get you to furnish me an order on that one.

22 BY MR. EVANS: But the only thing different,
23 Your Honor, even the change of venue was filed in all
24 causes.

25 BY THE COURT: I think, just as an aside, I
26 think the Court has ruled on all those motions, but
27 if I haven't, you can bring them to my attention.

28 BY MR. LUMUMBA: Are all the Court's orders in
29 the file?

1 **BY THE COURT:** They should be.

2 BY MR. LUMUMBA: All right. I will examine the
3 file again and see if I see all the orders, and then
4 I will let the Court know if we have any things that
5 remain outstanding.

6 **BY THE COURT:** All right, sir.

7 BY MR. LUMUMBA: We have a Motion to Extend the
8 Deadlines for Filing Motions. Actually, I don't know
9 if there is a deadline right now. But as far as that
10 is concerned, I have already shared with the Court--
11 well, I have a letter from Mr. Freelon, who, of
12 course, is co-counsel in this matter, where he points
13 out that he spent a considerable amount of time
14 looking for two of the witnesses who we needed for
15 this hearing today. One's name is Veal; the other
16 one's name is Hawkins if I recall.

17 **BY THE COURT:** How much time do you need, Mr.
18 Lumumba?

19 BY MR. LUMUMBA: We would ask for another 30
20 days.

21 **BY THE COURT:** All right, sir. That is
22 granted. Draw me an order to that effect setting,
23 setting motion deadline for both sides as being March
24 the 1st.

25 BY MR. LUMUMBA: Okay. We are ready now, Judge;
26 we would proceed with our hearing, and I guess what I
27 can do is we would like to call first Mr. Veal.

28 **BY THE COURT:** Do you want to talk to him
29 before--

1 BY MR. LUMUMBA: Yes, I do.

2 BY THE COURT: --you do that? All right, we are
3 going to take a few minutes and let Mr. Lumumba talk
4 to this witness he has not talked to. And then we
5 will get on with that hearing. Is that the last
6 motion?

7 BY MR. LUMUMBA: I believe that's the last
8 motion we have for today.

9 BY THE COURT: When we get through with that
10 one--

11 BY MR. LUMUMBA: --No, no, I have one other
12 motion. We can handle that right now.

13 BY THE COURT: All right.

14 BY MR. LUMUMBA: I would make a motion for the
15 Court to provide a transcript of today's proceedings
16 for our use. It will be important to the appeal. It
17 will also help us keep a record of-- it's become
18 obvious from where we are now and the things we have
19 discussed, an accurate record of what has been said
20 may be very important to subsequent determinations in
21 this case.

22 So I would ask the Court to provide a record,
23 and also, there is a witness who is going to testify
24 in a few minutes. And he is a witness that is going
25 to be a witness at trial. So we would be entitled to
26 use whatever we could from that as a form of
27 impeachment, so I would ask the Court to provide a
28 transcript.

29 I think that the transcript-- well, I don't

1 know. The Court Reporter can tell you what the
2 transcript will cost, but a similar transcript cost
3 about \$300.00.

4 **BY THE COURT:** No, I'm not going to require
5 that. The motion is overruled. There will be a
6 record of it, but I'm not going to require that, with
7 the exception you are going to be entitled to Mr.
8 Gilmore's stuff on the interlocutory appeal.

9 BY MR. LUMUMBA: I'm going to be entitled to
10 what now?

11 **BY THE COURT:** You are going to be entitled to
12 some transcript on interlocutory appeal, I would
13 think.

14 BY MR. LUMUMBA: Yes.

15 **BY THE COURT:** Okay. What relates, if they
16 grant the interlocutory appeal, you will be entitled
17 to that. Other than that, it's--

18 BY MR. LUMUMBA: Well, in order for them to
19 determine whether they grant it, my understanding is
20 they have to see some kind of record. I think it's
21 for the attached appendixes to it.

22 **BY THE COURT:** I don't think you have-- I don't
23 know. Well, you will just have to look at what the
24 rules say on that. I don't think that that is what
25 is required. You are going to have to file a
26 petition. If they take it on appeal, then they may
27 want to have the transcript that goes with it. I
28 don't think they require that on an interlocutory
29 appeal. If they do, if they require it, if that is

1 necessary, they will require-- they will notice us to
2 furnish it.

3 BY MR. LUMUMBA: Judge, let me just say this
4 because I think this goes to several things we have
5 discussed. I don't quite understand the financial
6 tightness that seems to grip the Court's
7 consciousness. It seems to me it would be a little
8 more offensive to put somebody to death because they
9 didn't have sufficient funds to properly defend
10 themselves than it would be to spend a little bit of
11 money.

12 Now the State here has taken on the
13 responsibility of putting people to death. With that
14 comes a certain economic burden. To attempt to
15 ameliorate that at the cost of sacrificing a
16 sufficient defense is not good. Any trained trial
17 lawyer, and I am sure the Court has practiced law for
18 a period of time on its own, knows the value of
19 transcripts and knows how helpful they are in
20 preparation for trial, also for the purpose of combat
21 at trial.

22 To deprive somebody of one, like the case of
23 Griffin v. Illinois I believe it was, said that it's
24 tantamount to leaving the indigent Defendant cripple
25 in a way in which a person who is financially well
26 off is not. At least in a situation where we have
27 got, at least in a situation where we can do
28 something to keep up the balance, we are not asking
29 for the kind of money that some people put into a

1 case, but we certainly would like to have enough to
2 have a sufficient defense here, and to give this man
3 an adequate opportunity trying to save his own life.

4 So, you know, I wish that the Court would kind
5 of try to stretch its mind on that point. I know
6 that this might not be a popular thing to do nowadays
7 in that there may be a lot of people sitting in the
8 audience who might not like that and that kind of
9 stuff. But the reality is that that is an absolute
10 requirement, and you know, I really sense a certain,
11 you know, and I'm not trying to be disrespectful, but
12 a certain stinginess in the way that we are basically
13 approaching this matter. Most economic matters are
14 being denied here, and I think that that kind of
15 tightness is going to ultimately, here again, bring
16 us back here five, ten, fifteen, twenty years ago if
17 something that is so untoward as a conviction in this
18 case should occur.

19 So I would ask the Court to reconsider.
20 Certainly, we need the stuff on the interlocutory
21 appeal. We certainly will need the stuff of a
22 witness about to testify. This guy is going to
23 testify at trial. Certainly, the Court doesn't hope
24 that I could both ask him questions and rely on my
25 notes to cross-examine him at the time of trial and
26 impeach him with my notes. That is physically
27 impossible, you know. You can't do that. So that's
28 why I am suggesting that we at least allow those two
29 areas: The interlocutory appeal directed areas as

1 well as the areas which have to do with live
2 testimony of witnesses. In this case I am
3 particularly concerned about the testimony we are
4 about to take.

5 **BY THE COURT:** All right. Well, of course, at
6 this point in time the Court doesn't know whether he
7 is going to impeach what he said to begin with, so I
8 have got no way to rule on that yet. The case law is
9 clear that you are not just entitled to a transcript
10 in every case. I routinely deny those and have in
11 every capital murder case I have had, and there is no
12 authority for that other than I guess I could
13 exercise my discretion. I see no basis for that in
14 this case, and so I deny--

15 **BY MR. LUMUMBA:** --Do you always exercise your
16 discretion in denying it?

17 **BY THE COURT:** I have so far; yes, sir.

18 **BY MR. LUMUMBA:** So there is really not much
19 discretion. What you do is you just have a rule
20 where you deny.

21 **BY THE COURT:** Well, I have so far. I guess
22 so.

23 **BY MR. LUMUMBA:** All right.

24 **BY THE COURT:** Okay, we will take about 15
25 minutes while you talk to your witness.

26 (FOLLOWING A RECESS, PROCEEDINGS CONTINUED IN
27 OPEN COURT ON 1/26/98 WITH THE SAME COUNSEL AS
28 PREVIOUSLY STATED PRESENT AND WITH THE DEFENDANT
29 PRESENT:)

1 BY MR. LUMUMBA: Judge, I have, I want to make a
2 motion, whether you call it a motion or a suggestion
3 or whatever, okay. I had a short while to talk to
4 the witness. In my view, this matter would be better
5 handled to just get it finished with. Now I have an
6 address and everything for the witness which I didn't
7 have before, okay. If we just go ahead and do the
8 entire hearing, which would be a short hearing I can
9 assure the Court, at one time. And see, there is
10 another witness who is still what I call on the lamb,
11 you know.

12 BY THE COURT: Mr. Hawkins?

13 BY MR. LUMUMBA: Mr. Hawkins, right. So if I
14 can procure his number, then I will have a chance to
15 get him at the hearing, and I really don't want to
16 have big gaps between the time that they testify. I
17 mean I want to diminish any type of possibilities of
18 people talking to each other or telling--

19 BY THE COURT: --You think you can get Mr.
20 Hawkins now? You think you can get him served?

21 BY MR. LUMUMBA: Well, yeah, I think so if I can
22 get all the assistance I can from them in terms of
23 letting me know where he is.

24 BY THE COURT: Do you know where he is now?

25 BY MR. LUMUMBA: We have some, we have been
26 given-- yeah, we have been given some leads. Let's
27 put it that way, but I don't know--

28 BY THE COURT: --Sheriff Banks is here, isn't
29 he? Have you talked to him?

1 BY MR. LUMUMBA: Yeah, maybe Sheriff Banks can
2 tell me. I don't know, but he would know. Sheriff
3 Banks is not where I got the leads from.

4 BY THE COURT: I understand.

5 BY MR. LUMUMBA: But I will certainly be willing
6 to ask him, yeah.

7 BY THE COURT: What you are saying is you want
8 to have this hearing at another time when you can
9 have both of them?

10 BY MR. LUMUMBA: Yeah, right.

11 BY THE COURT: I think that would be more
12 efficient--

13 BY MR. LUMUMBA: Right.

14 BY THE COURT: --if we do that myself. Would
15 you ask Mr. Sheriff Banks to come in.

16 (Sheriff Banks enters the courtroom.)

17 BY THE COURT: Hello, Sheriff. You don't need
18 to be sworn. I just need some information from you.
19 This Mr. Hawkins, who is going to be a witness in
20 this case who has been in your jail, I think, do you
21 have any idea where he is, or where he could be
22 located?

23 BY THE SHERIFF BANKS: He lives in Itta Bena.
24 I don't know whether he is working anywhere now or
25 not, Judge.

26 BY THE COURT: Do you think we, you would be in
27 a position to help us? If a subpoena is issued for
28 him, do you think you can get him served?

29 BY THE SHERIFF BANKS: Oh, yeah. I think we

1 can find him. Yes, sir.

2 **BY THE COURT:** All right.

3 BY MR. LUMUMBA: Okay, then I will set up a
4 date, and I will get Sheriff Hawkins a subpoena.

5 BY THE SHERIFF BANKS: Okay. No, I am Banks.

6 BY MR. LUMUMBA: No, I'm sorry.

7 **BY THE COURT:** That is Sheriff Banks. Well, why
8 don't we set a hearing date while we are here today?

9 BY MR. LUMUMBA: Okay. All right.

10 **BY THE COURT:** And the Sheriff will know you
11 have got the subpoena coming, and I can also tell Mr.
12 Veal he has got to be back on that day.

13 BY MR. LUMUMBA: Okay.

14 BY THE SHERIFF BANKS: He is on paper, Judge,
15 so I am sure that the probation and parole can find
16 him.

17 **BY THE COURT:** Right, okay.

18 BY MR. LUMUMBA: You say Mr. Hawkins is on
19 paper?

20 BY THE SHERIFF BANKS: Yes, sir.

21 BY MR. LUMUMBA: Okay. Yes, that's a good idea,
22 Judge. Is there any particular days of the week when
23 the Court--

24 **BY THE COURT:** --Linda, what have I got next
25 week?

26 BY MR. LUMUMBA: --does its motions?

27 (The Court Reporter handed a calendar to the
28 Court.)

29 **BY THE COURT:** What have you got either - I'm

1 talking to both sides - Tuesday or Thursday of next
2 week?

3 BY MR. EVANS: I think Tuesday I am supposed to
4 be in Jackson at a meeting. I don't know of
5 anything; I think there is-- you may have a trial set
6 next Thursday. I think you have got a trial set
7 Wednesday and Thursday.

8 BY THE COURT: That is this week.

9 BY MR. EVANS: Oh, you are talking about--

10 BY THE COURT: --I'm talking about next week.

11 BY MR. EVANS: Next week, okay.

12 BY MR. LUMUMBA: Tuesday is the 3rd.

13 BY MR. EVANS: What is the date of the--

14 BY THE COURT: Would be the 3rd. Today is the
15 26th. It would be the 3rd or the 5th.

16 BY MR. LUMUMBA: I actually have a trial set
17 there. I don't know whether it's going to go or not,
18 but I have a trial set next week.

19 BY THE COURT: Which day are you talking about?

20 BY MR. LUMUMBA: Well, I have one starting on
21 Monday, and it may go at least until the 5th, you
22 know. It is probably going to go that long. It's a
23 conspiracy case and a drug--

24 BY THE COURT: What about the 11th?

25 BY MR. LUMUMBA: The 11th for me is probably
26 going to be all right. Right now I have a trial set
27 then too, but I don't think it is going to go. Let
28 me, can I suggest a date?

29 BY THE COURT: Yes, sir.

1 BY MR. LUMUMBA: Can I suggest the-- well, is
2 the 16th a holiday?

3 BY THE COURT: It is President's Day, but I will
4 be in term in Choctaw County. And I will be there,
5 well, who knows how long it is going to take, but two
6 weeks are set aside for that term.

7 BY MR. LUMUMBA: Okay. What about-- the briefs
8 are due; we set the motions for this case until what,
9 the 2nd?

10 BY THE COURT: The 1st. Well, yeah, be the 2nd
11 of March, right.

12 BY MR. LUMUMBA: 2nd of March. Can we do this
13 on the 3rd?

14 BY THE COURT: Of March?

15 BY MR. LUMUMBA: Yes.

16 BY MR. HORAN: There is a term starting here.
17 Unless, you are not going to be able to do it here.

18 BY THE COURT: Yeah, the term starts here. The
19 courtroom will be occupied unless you want to-- we
20 can do it somewhere else.

21 BY MR. LUMUMBA: Well, that is okay with me.

22 BY MR. EVANS: The only problem is we will have
23 a grand jury that day. Could we possibly could do it
24 after lunch that day?

25 BY MR. LUMUMBA: That is okay with me.

26 BY THE COURT: He is talking about the 3rd being
27 on Tuesday.

28 BY MR. EVANS: Oh, okay.

29 BY THE COURT: That would be the first Tuesday

1 in this term.

2 BY MR. LUMUMBA: All right. Do you know where
3 you are going to be?

4 BY THE COURT: Well, let's see. Wherever y'all
5 want me, I guess.

6 BY MR. LUMUMBA: The closer the better for me
7 but, you know, whatever. What about Winona?

8 BY THE COURT: Yeah, any reason we can't do this
9 in Montgomery County?

10 BY MR. EVANS: I don't see why we couldn't.

11 BY THE COURT: Okay. Let me go call my Court
12 Administrator real quick and make sure that is okay.

13 (The Court leaves the courtroom briefly and then
14 returns.)

15 BY THE COURT: Okay, let's set it for the 3rd in
16 Winona at 10 o'clock.

17 BY MR. LUMUMBA: Going to do it on-- 10
18 o'clock?

19 BY THE COURT: Uh-hum.

20 BY MR. LUMUMBA: Okay.

21 BY THE COURT: 10 o'clock on the 3rd.

22 BY MR. LUMUMBA: Okay, that will work.

23 BY THE COURT: Okay.

24 BY MR. LUMUMBA: Okay, that is the last motion I
25 have for today.

26 BY THE COURT: Okay, now. I am prepared to set
27 a trial date for this, and that is pending, depending
28 on what the Supreme Court does with this
29 interlocutory appeal. If they issue a stay, then, of

1 course, this date won't be-- it will not be
2 relevant. But I am ready to set a date.

3 BY MR. LUMUMBA: Okay.

4 BY THE COURT: And the Court has made inquiry
5 with the Court Administrator, talked directly to the
6 Court Administrator in Lee County. It had been my
7 anticipation that we could try this in June, and
8 that's when I wanted to do that, but their docket
9 won't allow it. The only other dates they have were
10 July the 20th. That is a term in Grenada. I cannot
11 do that. I can't try it at that time. The next date
12 he gave me was September the 14th, and he gave me an
13 October date. I'm going to set it for September the
14 14th.

15 BY MR. LUMUMBA: Excuse me one second, Judge.
16 Okay.

17 BY THE COURT: All right. Will the State enter,
18 send me an order setting it for the 14th.

19 BY MR. EVANS: Yes, sir.

20 BY MR. HORAN: Your Honor, procedurally, where
21 are we as to this particular trial date? There was a
22 motion for continuance. I haven't seen an order.

23 BY THE COURT: I think I have executed the
24 order.

25 BY MR. HORAN: To the new trial date?
26 Continuing for good cause until that particular date?
27 Have you entered an order--

28 BY THE COURT: No, sir. That's what I was
29 asking you. I have entered an order continuing until

1 further order of the Court, I believe. Isn't that
2 right, Mr. Lumumba?

3 BY MR. LUMUMBA: That's correct.

4 BY THE COURT: Now I need an order setting it--
5 oh, I will draw it. I will draw it. The Gilmores
6 are not here?

7 BY MR. EVANS: No, sir.

8 BY THE COURT: Okay, they are going to furnish
9 me-- according to what they have told me, they have
10 filed a Motion for Continuance. I told them I was
11 going to grant that Motion for a Continuance. I set
12 their causes for September 14th at this particular
13 time, and I will set that by order too. We will
14 probably at this March hearing, I will set a date by
15 then. I will set a date as to when we are going to
16 draw the venire, and that will be -- I can tell you
17 right now it's going to be about the middle of July.
18 And they will issue the summonses six weeks before
19 court. The questionnaire will go out with them then,
20 the same procedure that we used in the first case.

21 All right, if there is nothing further to be
22 brought before the Court, the Court will be
23 adjourned.

24

25 HEARING OF JANUARY 26, 1998 ADJOURNED

26

27

28

29

1 (COURT HAVING BEEN DULY OPENED ON MARCH 3, 1998,
2 AT APPROXIMATELY 11:30 A.M. IN WINONA, MISSISSIPPI, FOR MOTION
3 TO SUPPRESS HEARING AND OTHER PRETRIAL MATTERS BEFORE THE
4 HONORABLE CLARENCE E. MORGAN, III, CIRCUIT JUDGE, FIFTH CIRCUIT
5 COURT DISTRICT, THERE WERE THE FOLLOWING APPEARANCES:

6 Present and Representing the State of Mississippi:

7 HON. DOUG EVANS AND HON. KEVIN HORAN

8 Present and Representing the Defendant:

9 HON. CHOKWE LUMUMBA AND HON. HARVEY FREELON.

10 HOWEVER, THE DEFENDANT AND MR. LUMUMBA ACTUALLY CAME INTO THE
11 COURTROOM SHORTLY AFTER PROCEEDINGS STARTED AS WILL BE NOTED.)

12 BY MR. FREELON: Judge, Attorney Lumumba is
13 speaking with one of the witnesses right now, but I
14 do want to-- we filed a motion on yesterday, so I
15 wanted to give this to the Court before we get
16 started.

17 (The Court confers with a corrections officer.
18 Mr. Freelon hands a document to Counsel for the State
19 and to the Court.)

20 BY MR. FREELON: These were filed on yesterday.

21 (DEFENDANT ENTERS COURTROOM.)

22 BY MR. FREELON: Judge, can we not get one of
23 these chained removed?

24 BY THE COURT: They were removed and some-- he
25 either put them back on or Mr. Lumumba did it, so
26 they stay like they are.

27 BY MR. FREELON: Who put them back on?

28 BY THE COURT: The Defendant.

29 (Pause while Mr. Freelon confers with his

1 client.)

2 BY MR. FREELON: Judge, I have before you, first
3 is a Motion for Discovery of Information. Last time
4 we filed a Motion for Discovery, and I think you
5 asked, you let-- you submitted an order where there
6 was specific information that we needed to know, that
7 we should bring it forward. And I think there is
8 specific information at this point in time that we
9 need to know which is in the Motion for Discovery.
10 Since the time, since we last met, we have done an
11 investigation on this case, and there is some
12 information that we are going to have to have in
13 order to prepare a trial, Your Honor. And we have
14 included in this Motion for Discovery, and you can
15 look at them listed, but we need that information
16 specifically. We have reason to believe that there
17 are some other statements that is out here that was
18 given by witnesses that we don't have those
19 statements.

20 BY THE COURT: Okay. Give me the names of the
21 people that have given statements that you don't
22 have.

23 BY MR. FREELON: We have reason to believe that
24 Frederick Veal as well as the other gentleman that is
25 here to testify today. What is his name?

26 BY THE DEFENDANT: Maurice Hawkins.

27 BY MR. FREELON: Maurice Hawkins actually gave a
28 written statement, Your Honor, but we don't have
29 those. We don't have those statements.

1 **BY THE COURT:** I think--

2 BY MR. EVANS: --As far as I know, everything
3 has been given. If there is anything else, I can
4 ask, if they will tell me specifically what they are
5 looking for. If there is something I can check on, I
6 will be glad to.

7 (MR. LUMUMBA HAS ENTERED THE COURTROOM.)

8 **BY THE COURT:** As I stated before and have told
9 the State before, if they have this stuff, they have
10 to give it to you. They say they do not have it.

11 BY MR. FREELON: Your Honor--

12 **BY THE COURT:** If you can prove that that is not
13 true, then we will see what we can do about doing
14 it. I don't know what-- I don't know how to answer
15 it, Mr. Freelon, other than that. I am telling you,
16 you can have it. If it exists, you can have it.

17 BY MR. FREELON: Okay.

18 **BY THE COURT:** Okay.

19 BY MR. FREELON: And at this present time I
20 don't think we have a criminal record of the
21 individuals as well, a complete criminal record of
22 both of the witnesses. I think we requested it. As
23 a matter of fact, I think there was an argument
24 during the last trial that one of the problems--

25 **BY THE COURT:** --If you don't mind me; I don't
26 want to interrupt you, but let's go back. Did what I
27 just say take care 1, 2, and 3?

28 BY MR. FREELON: Not as far as I am concerned,
29 Your Honor. We have reason to believe that there are

1 statements, written statements.

2 **BY THE COURT:** But all I can do is say that you
3 are entitled to them. I am ordering if they have got
4 them, to give them to you. I can't do any more than
5 that, Mr. Freelon. So I am sustaining that part of
6 the Motion. If they have those statements, you are
7 entitled to them, and you are going to get them.

8 **BY MR. FREELON:** But you will give us an order
9 on that; right?

10 **BY THE COURT:** I think I already have, but if
11 not-- I have given you an order of discovery, that
12 they have to supply you everything that they have.

13 **BY MR. EVANS:** As far as an order, I would like
14 to know what he is talking about an order on. You
15 know, if he is saying the Court is ordering us to
16 give something that we don't have--

17 **BY THE COURT:** --No, I'm not.

18 **BY MR. EVANS:** --There can't be an order.

19 **BY THE COURT:** I'm not. I am ordering you to
20 comply with 406 is what I'm ordering you to do.

21 **BY MR. EVANS:** Yes, sir.

22 **BY MR. FREELON:** But can we get an order on
23 that, Your Honor?

24 **BY THE COURT:** I will give you an order
25 requiring the State to comply with Rule 406 to which
26 I assume you have no objection, Mr. Evans.

27 **BY MR. EVANS:** None at all, Your Honor.

28 (Mr. Lumumba and Mr. Freelon confer briefly.)

29 **BY MR. FREELON:** We were on 1, 2, 3; right?

1 **BY THE COURT:** Yes, sir. We are on 1, 2, 3.
2 Now that covers that, doesn't it?

3 **BY MR. FREELON:** Once we get the order, yes, it
4 covers that, Your Honor.

5 **BY THE COURT:** Okay, well, I will try my best to
6 get the order out tomorrow.

7 **BY MR. FREELON:** Your Honor, we have reason to
8 believe there was more reports between the law
9 enforcement office, a written report specifically
10 between the Sheriff of Leflore County and a couple of
11 the witnesses, inmates. We have reason to believe
12 that there was a written statement between those two
13 individuals, and we would like that written statement
14 as well.

15 **BY THE COURT:** That is a written statement
16 between who?

17 **BY MR. FREELON:** Between the two witnesses from
18 Leflore County - Mr. Veal, Mr. Hawkins that went to
19 the Sheriff of Leflore County.

20 **BY THE COURT:** Who has got-- who would have
21 custody of that?

22 **BY MR. FREELON:** That is the reason I am asking
23 this Court to order that we get that statement, Your
24 Honor.

25 **BY MR. EVANS:** Your Honor, if I'm not mistaken,
26 this is the same thing that they brought up last
27 hearing that the Court asked me to ask the Sheriff
28 about. I asked the Sheriff about, and he said there
29 wasn't one.

1 **BY THE COURT:** Do you have any objection to
2 having it if there was such an order--such a
3 document?

4 BY MR. EVANS: If there was, I would love to
5 have it myself.

6 **BY THE COURT:** Okay, then if anybody has it and
7 I have the authority over them to order it, then I
8 will order that that be furnished to both sides.

9 BY MR. FREELON: Next, Your Honor, we need a
10 copy of the criminal records, the criminal records of
11 the individual, Mr. Veal, as well as Mr. Hawkins with
12 the specific dates as far as what date the crime was
13 committed, the date of conviction. One of the
14 biggest arguments in the last trial, Your Honor,
15 according to the transcript, was that the Defendant's
16 Attorney did not receive a copy of the complete
17 criminal records of those two individuals.

18 BY MR. EVANS: Which the Rules do not require us
19 to give. We followed the Rules.

20 **BY THE COURT:** If it's under the Rules, you are
21 entitled to it. If it's not, you are not.

22 BY MR. LUMUMBA: Well, that is not necessarily
23 true, Judge.

24 **BY THE COURT:** It is from the purpose of that's
25 what my order is.

26 BY MR. LUMUMBA: Okay, well, then what we are
27 asking you is to go beyond the Rules because there is
28 relevance to the times of the convictions. The times
29 of the convictions would establish whether or not

1 they are admissible as impeachment. Now regardless
2 of whether the Rules says you have to have them in
3 every case, and certainly what you were prepared to
4 do in the last trial, you were prepared to sustain an
5 objection to them even impeaching the man because you
6 expressed some uncertainty as to when the convictions
7 occurred. Now as the Defendant's defense, we don't
8 have access to criminal records. We have no way of
9 knowing whether the person has been convicted within
10 the last ten years or not other than what the person
11 says, if the person agrees to talk to us. And with
12 all the witnesses that has not been the case.

13 So the point, the point that we have is that
14 there is a need to know here, and the appropriate
15 order we would ask the Court to do is issue an order
16 requiring them to give us the dates of the
17 conviction. That is not a hard thing for them to
18 do. It's difficult for us to get.

19 **BY THE COURT:** Do you have any objection to
20 furnishing it if you can get it?

21 BY MR. EVANS: Yes, sir; I do. I'm not going to
22 do their job for them when they can subpoena these
23 records if they want them. I don't have the records.

24 **BY THE COURT:** Okay, I'm not going to order it.
25 I'm not going to-- let me say this. I'm not going to
26 order the State to furnish them.

27 BY MR. FREELON: And, Your Honor, number-- the
28 same thing with number 7, Your Honor. It's self-
29 explanatory.

1 **BY THE COURT:** Now let me ask you this. Have we
2 disposed of 4 and 5? I guess we did, didn't we?

3 **BY MR. FREELON:** According to you, Your Honor,
4 we have disposed of 4 and 5. You are not going to
5 order them.

6 **BY THE COURT:** Okay.

7 **BY MR. FREELON:** Number 6 is the same thing as
8 the criminal records. 4 and 5 is what I spoke to you
9 about as far as the records between the Sheriff of
10 Leflore County and the two individuals--

11 **BY THE COURT:** Right, and I have ordered that.
12 6, I have denied.

13 **BY MR. FREELON:** Number 7 is in reference to
14 those two individuals as well.

15 **BY THE COURT:** Okay, I'm not going to order the
16 State to furnish that.

17 **BY MR. FREELON:** On number 8, Your Honor, we are
18 asking, we have reason to believe as well that there
19 has been money offered in this trial as well as money
20 changing hands. So we would like to know, Your
21 Honor, if there is any money that has been promised
22 or anything of value that has been promised to either
23 Frederick Veal or Maurice Hawkins through the State,
24 through the investigators, through any public
25 official, or even through any of the deceased's
26 family members. We would like to know that
27 information. And we have reason to believe, Your
28 Honor, that is the case. (Pause) That is number 8
29 on your copy.

1 **BY THE COURT:** Yeah, I know. I guess you can
2 answer that as to whether or not y'all have promised
3 them anything, any money.

4 **BY MR. EVANS:** Your Honor--

5 **BY THE COURT:** You would be the only government
6 I know of.

7 **BY MR. EVANS:** It is not discoverable unless
8 they can show some reason. It is also not relevant.
9 The only information that I have, which we will
10 furnish on discovery that came up recently, is where
11 a defense attorney in this case has offered a witness
12 money to tell a different story. That we will
13 furnish. I know of no information where none of our
14 office has offered anybody any money because we don't
15 have any way of doing that.

16 **BY THE COURT:** Okay, that answered that
17 question.

18 **BY MR. LUMUMBA:** Well, no, not quite, Judge. If
19 we have any money that was used to house either one
20 of these witnesses or do anything like that, we would
21 like it now. And if he is saying that they have been
22 offered no money by anybody, then we are requesting
23 that that statement be put in writing.

24 **BY THE COURT:** It's on the record.

25 **BY MR. LUMUMBA:** Is that his statement? Did you
26 understand him to say that, Judge, because I didn't
27 really understand him to say it? I understand--

28 **BY THE COURT:** He said his office had not.

29 **BY MR. LUMUMBA:** I understand him to say it was

1 irrelevant. That's what I understood.

2 **BY THE COURT:** No, he said his office had not.
3 I don't want to misquote you, Mr. Evans. That's what
4 you said--

5 BY MR. EVANS: --That's exactly what I said,
6 Your Honor.

7 BY MR. LUMUMBA: Okay, well, then it goes beyond
8 his office. He is responsible for the police
9 authorities also. That is the law. The law is that
10 he, that the prosecution is responsible for the
11 investigating authorities, police authorities
12 connected to this case. We are asking as it relates
13 to them and as to his knowledge as to whether any
14 civilian or family member or anyone else has because
15 if he is aware of that, that is Brady material.

16 BY MR. EVANS: Your Honor, to start with, even
17 though I don't think they are entitled to this; we
18 have no knowledge of anyone other than a defense
19 attorney offering any witnesses any money. That is
20 not-- however, none of this is relevant. This is an
21 improper way of even trying to attack this. If they
22 wanted to attack it by putting a witness on to state
23 something, that would be the proper way to attack it,
24 not like this.

25 BY MR. LUMUMBA: Judge, it is absolutely absurd
26 to suggest that if they know of somebody offering a
27 witness money which served in a trial to help
28 somebody get convicted and sentenced to life, that
29 they don't have the obligation to bring that

1 information forward. Secondly, it's absurd to
2 suggest that the offer of any kind of financial
3 remuneration doesn't go to the motive or interest of
4 a person that testifies. That is basic textbook,
5 first day in class evidence, and if he has been
6 there, he knows that.

7 So what the speech was about, I'm not quite
8 certain, but certainly he should know enough
9 presumably, if he is holding that office, that he is
10 responsible to get us that information. So what is
11 this statement about it's not relevant?

12 **BY THE COURT:** Well, he has answered the
13 question--

14 **BY MR. LUMUMBA:** --Well, I want a ruling.

15 **BY THE COURT:** He has answered the question that
16 he didn't.

17 **BY MR. LUMUMBA:** I would like a ruling on the
18 relevancy. I would like for you to rule--

19 **BY THE COURT:** --No, sir. You are not going to
20 get that.

21 **BY MR. LUMUMBA:** Why not?

22 **BY THE COURT:** You are not going to get a ruling
23 on the relevancy. The question is, is whether or not
24 is the answer to number 8. He has answered that, and
25 I have ruled, and there is nothing for me to rule
26 on. He said that there is not, and I'm not ruling on
27 the relevancy at this time.

28 **BY MR. LUMUMBA:** Okay.

29 **BY THE COURT:** So that is everything in this

1 Motion. What is next?

2 BY MR. LUMUMBA: So wait a minute. So your
3 ruling is, is that you don't believe that you need to
4 respond to the question of whether or not it's
5 relevant, whether somebody gave one of the witnesses
6 money or promised one of the witnesses money?

7 BY THE COURT: That's right.

8 BY MR. LUMUMBA: Okay. We want to continue the
9 motion date in this case, the deadline for the motion
10 date for a couple of reasons. Number one is that we
11 anticipate some affidavits from the Tupelo area with
12 respect to the prejudice in that environment. We, of
13 course, don't know people in Tupelo, but have been
14 able to make some contacts, and there is some people
15 doing some work to investigate that. And we, they
16 have informed us that they would be able to supply
17 some affidavits, but they weren't able to do it by
18 the time of this date.

19 Secondly, I have been involved with an extensive
20 federal trial prior to coming here to this trial and
21 have been preoccupied to some extent with the writing
22 of the interlocutory appeal in this case and with
23 many other matters; have been unable to completely
24 file all the motions which I need to be filed in this
25 case by today. So I am asking the Court to extend
26 the deadline. The trial in this case is set for
27 September 14th. I am not asking the Court to set a
28 deadline which would in any way interrupt that trial
29 date.

1 **BY THE COURT:** Okay, as I told you before, the
2 motion for change of venue, if you present it in a
3 manner that is correctly presented, I'm going to
4 entertain that at any time, including through voir
5 dire, Mr. Lumumba. So the motion deadline does not
6 apply to that until it gets to a point where it's
7 dilatory. And that will be somewhere in the
8 proximity of the time that we pull the jury, but it
9 will still be open to a renewal of your motion at
10 voir dire if voir dire should produce sufficient
11 grounds to make that motion sustainable. I will
12 entertain it at that time, so it does not apply.

13 What are the other motions that you want to file
14 that you want an extension for?

15 **BY MR. LUMUMBA:** I'm not sure of all the motions
16 that I may have to file, Judge, so I don't want to be
17 precluded from filing motions, but I know there is a
18 number of motions which may very well have to do with
19 the way that we voir dire the jury. We anticipate
20 that there is a motion to-- there is going to be a
21 motion filed to revisit the question of the change of
22 the venue back to its original situs. We found some
23 law which supports that.

24 And those are things which off the top of our
25 heads we are aware of. But we feel certain that when
26 a thorough review of the case is done, there is going
27 to be a necessity for some other motions. And we
28 also would, we also have to-- I am still going to
29 supply the Court with some information on another

1 matter, and that will be done. We are not asking to
2 change the trial date. We are just trying to get an
3 extension on the motion date.

4 **BY THE COURT:** Okay, well, I let you set this
5 one. When do you want the next one set?

6 **BY MR. LUMUMBA:** Okay, why don't we go, give us
7 60 days, and today is-- what is this March the 1st?
8 So we can go to June. I would say--

9 **BY THE COURT:** June? That is not 60 days.

10 **BY MR. LUMUMBA:** All right, well--

11 **BY THE COURT:** I'm not going to June.

12 **BY MR. LUMUMBA:** Okay, we say--

13 **BY THE COURT:** I will give you the 60 days, but
14 I'm not going to June.

15 **BY MR. LUMUMBA:** Why don't we go to May, the
16 first Friday in May, whatever Friday that is.

17 **BY THE COURT:** Okay. Now there won't be any
18 more extensions on that except for change of venue.
19 That will be it. So if you don't have it done then,
20 it's just not going to get done.

21 **BY MR. LUMUMBA:** We are prepared to proceed on
22 our Motion to Suppress Statements.

23 **BY THE COURT:** Okay. Have you got witnesses?

24 **BY MR. LUMUMBA:** Yeah, we have witnesses.

25 **BY THE COURT:** All right, would you call them in
26 here, and let's get them sworn.

27 **BY MR. LUMUMBA:** All right. The first witness I
28 would call is Mr. Hawkins. Mr. Hawkins, wherever he
29 is at. He is here somewhere.

1 **BY THE COURT:** Let's get, I want all the
2 witnesses on this Motion to be up and be sworn at the
3 same time.

4 **BY MR. LUMUMBA:** I want-- the witnesses I have
5 -- well, let's see who they want to call. Do they
6 want to call any witnesses?

7 **BY THE COURT:** Well, let's see-- it's your
8 motion. Let's see who you want to call.

9 **BY MR. LUMUMBA:** Well, I may call Hawkins--

10 **BY THE COURT:** If you think you are going to
11 call them, you are going to have to swear them. I'm
12 going to put them under the rule. If you don't swear
13 them now and they sit in the courtroom, I'm not going
14 to let them testify.

15 **BY MR. LUMUMBA:** The witnesses that I may call
16 are Hawkins, Veal and Banks.

17 **BY THE COURT:** Okay. Have you got any other
18 than that?

19 **BY MR. EVANS:** Well, it's hard to say until I
20 know what their motion is, Your Honor.

21 **BY THE COURT:** This is the Motion to Suppress
22 the Statements.

23 **BY MR. EVANS:** But until they start putting on
24 proof, I really don't have any idea of which
25 direction they are going.

26 **BY THE COURT:** Well, if you have got anybody you
27 think you might call, you need to tell them to get
28 out of--

29 **BY MR. EVANS:** --I may possibly call John

1 Johnson as a witness. I'm not sure.

2 BY THE COURT: All right. If you think they are
3 going to testify, they need to get out of the
4 courtroom.

5 BY MR. EVANS: And possibly Robert Jennings.
6 I'm not sure because I don't know what their motion
7 really is.

8 BY THE COURT: Okay. Well, I can't anticipate
9 that. I am just trying to tell you the rule has got
10 to apply to both sides. So if you want them to
11 testify, just decide who all that might be, and let's
12 let them step out.

13 BY MR. EVANS: Would the Court go ahead and set
14 a hearing date on these motions since the Court has
15 extended the deadline so that--

16 BY THE COURT: --What is the day on that Friday
17 in May? We will be in Vaiden.

18 BY THE COURT REPORTER: May 1st is a Friday.

19 BY THE COURT: Oh, May 1st is a Friday? We
20 won't be in Vaiden.

21 BY MR. LUMUMBA: Well, I would suggest we go to
22 May 8th then.

23 BY MR. HORAN: That is just the deadline; the
24 hearing date?

25 BY THE COURT: Yeah, okay.

26 BY MR. LUMUMBA: What is the issue that he is
27 raising? I'm sorry; I didn't catch that.

28 BY THE COURT: He wants me to set a date, and I
29 will do that.

1 BY MR. LUMUMBA: Set a date for the--

2 BY THE COURT: The motion deadline is May the
3 1st. The motions must be filed by May the 1st. We
4 will hear them the next Friday.

5 BY MR. LUMUMBA: Judge, that may be a problem
6 for me. I am in a trial starting on May the 4th.

7 BY THE COURT: Okay, when do you want to hear
8 them?

9 BY MR. LUMUMBA: Can we deal with that before we
10 leave here?

11 BY THE COURT: Yeah, before we leave here.

12 BY MR. LUMUMBA: We will deal with it before we
13 leave here. There is no big problem on that.

14 BY THE COURT: Okay. The deadline is May the
15 1st.

16 BY MR. LUMUMBA: Okay.

17 BY THE COURT: Sir, you need to raise your hand.

18 (WITNESSES SWORN BY THE CLERK.)

19 BY THE COURT: Everybody but whoever is going to
20 testify now needs to go out of the courtroom.

21 BY MR. LUMUMBA: Hawkins, we want Hawkins.

22 BY THE COURT: Mr. Hawkins, come around over
23 here.

24 MAURICE BERNARD HAWKINS,
25 upon being called to testify as a witness by the Defendant on
26 the Motion to Suppress Statements, having first been duly
27 sworn, testified as follows, to-wit:

28 BY THE COURT: State your name for the record.

29 BY THE WITNESS: Maurice Bernard Hawkins.

1 **BY THE COURT:** You need to speak up so they can
2 hear you; okay. All right, sir.

3 (Defense Counsel confer.)

4 BY MR. LUMUMBA: Okay, Judge, I'm sorry, but I
5 want Mr. Veal.

6 **BY THE COURT:** Okay. Mr. Hawkins, you need to
7 go out. Go get Mr. Veal. Bring Mr. Veal.

8 **FREDERICK VEAL,**
9 a black male called to testify by the Defendant on the Motion
10 to Suppress Statements, having first been duly sworn, testified
11 as follows, to-wit:

12 **BY THE COURT:** State your name for the record.

13 BY THE WITNESS: Frederick Veal.

14 DIRECT EXAMINATION BY MR. LUMUMBA:

15 Q. Okay, witness, could you state your name once again
16 for the record, please.

17 A. Frederick Veal.

18 Q. And Mr. Veal, are you a person who has previously
19 testified in a case involving Mr. Flowers?

20 A. Yes, sir.

21 Q. And at some point in time, Mr. Veal, were you, in
22 fact, in a same jail that Mr. Flowers was in?

23 A. Yes, sir.

24 Q. And where was that at?

25 A. Leflore County Jail in Greenwood.

26 Q. Did something happen in order to put you in contact
27 with Mr. Flowers?

28 A. Yes, sir.

29 Q. Tell me about it, please.

1 A. I wanted to get out of jail, and I didn't have no
2 money, so I asked to speak to Mr. Banks. So I wanted to know
3 why my bond was ten thousand dollars. He told me I was a two
4 time convicted felon, and he asked me, "Well, you can help
5 yourself out. Let me put you in the cell with Curtis Flowers
6 and see if you can get any information from him."

7 Q. Okay, so Mr. Banks asked you, just to be clear, he
8 said that you could help yourself out; let me put you in the
9 cell with Curtis Flowers and see if you can get some
10 information from him; is that correct?

11 A. Yes, sir.

12 Q. And that was Mr. Banks?

13 A. Yes, sir.

14 Q. What is Mr. Banks' position?

15 A. Sheriff.

16 Q. Okay, and after Mr. Banks did that, what occurred
17 then?

18 A. Well, I stayed in there with Curtis about three days,
19 and an investigator came down, Mr. Johnson, and I gave him a
20 statement.

21 Q. Okay, and what statement did you give him?

22 A. That he told me he killed them folks in Winona.

23 Q. And had Mr. Flowers actually told you that?

24 A. No, sir. No, sir. No, sir. He did not tell me
25 that.

26 Q. Okay, now why did you say that if he had never told
27 you that?

28 A. Well, I was coerced. I was coerced, and they came
29 to me about the money. They had--

1 Q. --Excuse me.

2 BY MR. LUMUMBA: I can only hear one person at a
3 time. Can you ask them to be quiet, please?

4 BY THE COURT: No, sir. They have a right--

5 BY MR. EVANS: --He is talking to me--

6 BY THE COURT: --They have a right to
7 communicate, Mr. Lumumba. You just go ahead and
8 continue--

9 BY MR. EVANS: --You talk to the witness.

10 BY THE COURT: You just keep questioning the
11 witness.

12 BY MR. LUMUMBA: I am talking-- I am just asking
13 this Court to inform him to be quiet. I can't hear
14 if he keeps talking.

15 BY MR. EVANS: Which the Court is not going to
16 do while we are talking at the counsel table.

17 BY THE COURT: They have as much right to confer
18 as you did--

19 BY MR. LUMUMBA: --Yeah, but they can't talk
20 that loud. They can't talk loud.

21 BY THE COURT: Just go ahead, Mr. Lumumba. Go
22 ahead with your questioning.

23 BY MR. LUMUMBA: Okay.

24 BY MR. LUMUMBA:

25 Q. Now you said you were coerced; is that correct?

26 A. Yes, sir.

27 Q. Okay, and who, who put the pressure on you? Who
28 coerced you?

29 A. Well, all of them did: Johnson, Mr. Evans, all of

1 them. I tried to back out when we went to Tupelo to go to
2 court. They said, "You can't back out." I said, "I don't want
3 to testify." So they say, "You ain't got no choice."

4 Q. Okay. And you said you didn't have no choice; is
5 that right?

6 A. Yes, sir.

7 Q. They told you you didn't have no choice?

8 A. I didn't have no choice.

9 Q. Okay. Now Mr. Veal, after you gave them a statement,
10 did, in fact, anything happen with your bond?

11 A. My bond?

12 Q. Yeah. You said--

13 A. --no, sir. My sister dropped charges on me, and I
14 needed a hundred dollars to get out. They let me go on that.

15 Q. They let you go?

16 A. On the hundred dollars. I didn't have it.

17 Q. You didn't have it, and they let you go?

18 A. Yeah.

19 Q. Is that correct?

20 A. Yes, sir. They let me out.

21 Q. Okay. Now Mr. Veal, let me ask you this. When was
22 the first time you ever saw me in life?

23 A. Uh, in Kosciusko. In Kosciusko.

24 Q. Did I come into the back room and talk to you; right?

25 A. Yeah, I said I needed to talk to you on a different
26 date, at a different time, somewhere else.

27 Q. Okay. Did I do anything in Kosciusko to try to
28 promise you anything, to threaten you, or to coerce you at all?

29 A. No, sir.

1 Q. Had I ever seen you before in life before that day?

2 A. No, sir.

3 Q. Now after we talked, did somebody else come in and
4 talk to you about me?

5 A. Well, yes, sir.

6 Q. And tell me about that.

7 A. They said, uh, give me a tape recorder and let me see
8 could, see could I get something out of you.

9 Q. Okay, they offered you a tape recorder to see if you
10 could tape me talking to you; is that correct?

11 A. Yes, sir.

12 Q. Secretly; is that right?

13 A. Yes, sir.

14 Q. To see if you can get something on me; is that right?

15 A. Yes, sir.

16 Q. And didn't they also--

17 BY MR. HORAN: --Your Honor, he is leading his
18 witness.

19 BY THE COURT: Yes, sir. Don't lead him.

20 BY MR. LUMUMBA: He had already testified. I am
21 just trying-- he is talking kind of low. I'm trying
22 -- is it okay, Judge?

23 BY THE COURT: As long as you don't lead him.

24 BY MR. LUMUMBA: Okay. Now -- Judge, okay,
25 well.

26 BY MR. LUMUMBA:

27 Q. Now let me ask you this. Did they say something
28 about me not being able to try this case?

29 BY MR. EVANS: Your Honor, that is leading the

1 witness.

2 **BY THE COURT:** Sustained.

3 BY MR. LUMUMBA:

4 Q. Okay, did they say anything else about me? Let's put
5 it that way.

6 A. Uh, no, sir. Not, not, not, not that I can
7 recollect.

8 Q. Okay.

9 A. But uh--

10 Q. --Okay. Pardon? I'm sorry.

11 A. After the case was over, they said after he get
12 convicted, they were going to split the money. So after that,
13 I called them. I didn't have nowhere to stay or nothing. I
14 asked them if they are going to give me my money. They said
15 you have got to wait again until we go to court again. I
16 said, "Why I got to wait? You said as soon as he get
17 convicted." So they told me they couldn't give me nothing or
18 do nothing for me until after the second case over with.

19 Q. Now who told you that?

20 A. Well, I was calling them quite a bit because I was in
21 a jam. I was, my life been threatened, and peoples on the
22 street thinking about killing me, said I needed a bullet in my
23 head for testifying against Curtis Flowers and just a whole lot
24 of stuff. And I was paranoid and nowhere to stay, and I just
25 been on, been on scared run.

26 Q. Okay, but who, who told you that they were going to
27 give you some money and then didn't do it after the first
28 conviction?

29 A. Uh, Mr. Evans and Mr. Johnson.

1 Q. Mr. Evans and Mr. Johnson?

2 A. Yes.

3 Q. Okay, hold on one second.

4 (Pause while Defense Counsel confer.)

5 Q. Now, and so then they said you could get it after the
6 second conviction; is that correct?

7 A. Uh-huh.

8 Q. Now did they have a tape recorder playing when they
9 were talking to you so they could get down what they were
10 saying?

11 A. No, sir. They didn't really want to talk about no
12 money until after the trial, they say.

13 Q. Okay, now--

14 A. I was, I was vulnerable at the time, and I wanted to
15 get out of jail, and I was thinking about the money. I didn't
16 have nowhere to stay, so I testified really with coercing
17 testifying against Mr. Flowers--

18 Q. Okay.

19 A. --on that issue.

20 Q. Okay. Now Mr. Veal, and I'm going to ask you this
21 because-- well, I'm going to ask you two other things, and
22 that's all I wanted to talk about. First of all, did there
23 ever come a time when you stayed in Tupelo?

24 A. Yes, sir.

25 Q. And where did you stay?

26 A. The Mariott, the Mariott.

27 Q. Did you pay for your hotel bill?

28 A. No, sir.

29 Q. Who paid for it?

1 A. I guess the state paid for it.

2 Q. Now while you were there, did you stay in that room
3 with someone else?

4 A. Maurice Hawkins.

5 Q. And while you were there, did you have discussions
6 with Mr. Hawkins?

7 BY MR. EVANS: Your Honor, that is not
8 relevant.

9 BY THE WITNESS:

10 A. Yes, sir.

11 BY MR. EVANS: It is also hearsay.

12 BY MR. LUMUMBA: No, it is clearly relevant,
13 Judge. First of all, I just asked him did he have
14 discussions. So there is no objection to that
15 question presumably.

16 BY MR. EVANS: Which is not relevant to what we
17 are here on today. It would also be hearsay.

18 BY MR. LUMUMBA: Well, it may be relevant to--
19 I say it is, and I think you need to hear it first.

20 BY THE COURT: Well, how would it be relevant?

21 BY MR. LUMUMBA: Can we approach the bench?
22 Well, first of all, let me--

23 BY THE COURT: --Why? There is no jury here.

24 BY MR. LUMUMBA: --just tell you how I feel.
25 Let me tell you how I feel since you don't -- you
26 know, you know if I was a judge, I would be almost
27 falling off the bench now after I had heard that the
28 DA is offering--

29 BY THE COURT: --Yes, sir, but you are not the

1 judge, Mr. Lumumba; I am, so you explain to me what I
2 want to know--

3 BY MR. LUMUMBA: --Okay, but, but in any event,
4 since that is not the case, let me just explain my,
5 my own position, okay? That my position is this, is
6 that the, uh, what I expect that the witness will
7 suggest and what I expect that the witness will
8 testify to--

9 BY MR. EVANS: --Your Honor, I would ask that
10 the witness be removed from the room if he is going
11 to attempt to testify what he wants this witness to
12 say.

13 BY MR. LUMUMBA: I think that is unnecessary.
14 Now--

15 BY MR. EVANS: --It is not unnecessary if he is
16 going to--

17 BY MR. LUMUMBA: --Look; hold it; hold it.

18 **BY THE COURT:** It is necessary. Mr. Veal, you
19 need to go outside until we handle this matter.

20 BY MR. EVANS: Thank you, Your Honor.

21 BY MR. LUMUMBA: Okay, you can go out of the
22 room.

23 (Witness, Mr. Veal, begins to leave the
24 courtroom.)

25 BY MR. LUMUMBA: Judge, now look, Judge, you
26 know--

27 **BY THE COURT:** --Wait a minute.

28 BY MR. EVANS: May we wait until the witness
29 leaves the room?

1 BY MR. LUMUMBA: I'm not talking about that. I
2 have another procedural matter I would like to
3 request of the Court. Now look, Judge, since I have
4 been here, the rulings have been decidedly one-
5 sided. Now let me just show you how ridiculous what
6 just happened was. I--

7 BY MR. EVANS: --Your Honor, are we here on this
8 motion--

9 BY MR. LUMUMBA: --objected--

10 BY MR. EVANS: --or are we here for him to make
11 a speech about the Court?--

12 (COURT REPORTER'S NOTE: All three were talking
13 at one time.)

14 BY THE COURT: --No, listen; just listen, both
15 of you. No, both of you. Let's get back on the
16 motion.

17 BY MR. LUMUMBA: Okay, I'm on the motion.

18 BY THE COURT: Well, then why is that relevant?

19 BY MR. LUMUMBA: I just requested to approach
20 the bench so that the witness wouldn't hear the
21 conversation.

22 BY THE COURT: Okay.

23 BY MR. LUMUMBA: You denied that, and then as
24 soon as he asked the witness to leave the room, you
25 grant it.

26 BY THE COURT: Okay.

27 BY MR. LUMUMBA: Now what kind of sense does
28 that make?

29 (NOTE: There was talking in the audience of the

1 courtroom.)

2 **BY THE COURT:** We are going to have order in
3 this courtroom, or I will clear it.

4 **BY MR. LUMUMBA:** You know, I'm going to have
5 justice in this courtroom too.

6 **BY THE COURT:** Mr. Lumumba, you are going to be
7 in contempt of this courtroom--

8 (NOTE: Some members of the audience applaud.)

9 **BY THE COURT:** All right, Mr. Sheriff. One more
10 display like that and I'm going to remove y'all from
11 the courtroom, and you are going to be held in
12 contempt. Now we are going to conduct this thing in
13 an orderly manner. If you cannot do that, I can tend
14 to it.

15 Now the question is whether, how is that
16 relevant, and that's what I want to know. That is
17 what is pertinent to this hearing.

18 **BY MR. LUMUMBA:** Can I ask you one thing?

19 **BY THE COURT:** No, sir. You can answer that
20 question. Why is it relevant?

21 **BY MR. LUMUMBA:** It is relevant, and I was
22 expressing the relevance by attempting to approach
23 the bench.

24 **BY THE COURT:** Okay, well, express it to me now
25 why it is relevant.

26 **BY MR. LUMUMBA:** The reason why it's relevant is
27 because I think that the witness will have something
28 to say that will reflect on the fact that not only
29 he, but the previous, but the other witness, Hawkins,

1 was also approached in the same way to solicit him as
2 a tool to get a statement from the Defendant. Now
3 I'm assuming that the Court is aware - and if it's
4 not, I have law which tells us - that it is
5 inappropriate for the police, the prosecutor or
6 anybody affiliated with the state to enlist a, to
7 solicit a snitch to go in and get a statement from a
8 person and so that they could subsequently use the
9 information. And apparently, Veal has just testified
10 that was what he did.

11 **BY THE COURT:** Okay. But you are asking now for
12 him to testify to hearsay testimony, and that is
13 sustained.

14 **BY MR. LUMUMBA:** Not necessarily, not
15 necessarily. You have got to let me ask the
16 questions, and then after I ask the question-- well,
17 let me--

18 **BY THE COURT:** --Okay, I'm not going to let him
19 testify to hearsay. You can ask the question. You
20 can object if it's a hearsay answer. Bring him back
21 in.

22 **BY MR. LUMUMBA:** Okay, well, let me say this
23 then. Well, then--

24 **BY THE COURT:** (To the bailiff)--Wait just a
25 minute.

26 **BY MR. LUMUMBA:** What I'm going to have to do,
27 since-- see, I know how to lay a foundation.

28 **BY THE COURT:** Okay.

29 **BY MR. LUMUMBA:** You can't get me on that one.

1 So what we are going to have to do is we are going to
2 have to hold Veal here so I can put Hawkins on the
3 stand; let him lie, and then we are going to call
4 Veal back.

5 BY MR. EVANS: Your Honor, I object to all of
6 this oration in the courtroom by him, the comments
7 that he is making about everyone in the courtroom.
8 It is not relevant, and I believe he knows a little
9 bit more about how to handle proper etiquette in the
10 courtroom.

11 BY THE COURT: If you want to question your
12 witness, that is fine. But I have had enough of the
13 speeches. I can determine this case from what I hear
14 from up here, and then we will have argument when the
15 time comes.

16 BY MR. LUMUMBA: Do you have any problem, do you
17 have any problem with me reserving the right to
18 recall my witness? (Pause) Because if you do, we
19 will interrupt his testimony right now, and we will
20 put Hawkins on.

21 BY THE COURT: No, you are going to have to put
22 him on now.

23 BY MR. HORAN: May I say something? The
24 question turns on whether or not this witness and the
25 other witness were planted in the jail. All this
26 other happened after the fact. When Hawkins gets to
27 trial in Tupelo, that's when he can be impeached, but
28 not here.

29 BY THE COURT: The motion is whether or not

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

DISK
ENCLOSED

1 there was prosecutory misconduct that would require
2 the suppression of these witnesses. What Mr. Veal
3 apparently was getting ready to testify to, from what
4 it appeared to me and from you said, Mr. Lumumba, was
5 hearsay between him and Mr. Hawkins as to what Mr.
6 Hawkins said. You can't lay a predicate that is
7 going to get that in.

8 BY MR. LUMUMBA: Okay, well, I want to call Mr.
9 Hawkins right now.

10 BY THE COURT: No, sir. We are going to
11 continue with Mr. Veal.

12 BY MR. LUMUMBA: Now explain to me why you are
13 not going to allow me to recall--

14 BY THE COURT: --because the order, because it's
15 the order of proof. You have got a witness on the
16 stand. You have got to finish with him.

17 BY MR. LUMUMBA: No, no, no. They break that
18 all the time.

19 BY THE COURT: Well, you are going to have to
20 finish with him today, Mr. Lumumba.

21 BY MR. LUMUMBA: All the time. You have experts
22 flying in from the country--

23 BY THE COURT: --You are going to have to finish
24 with him today, Mr. Lumumba, because that is my
25 ruling.

26 BY MR. LUMUMBA: We are going to finish today,
27 Judge.

28 BY THE COURT: I know. You are going to have to
29 finish this witness right now. That's my ruling.

1 BY MR. LUMUMBA: No, no, no, no. Let me, let me
2 just explain how simple this is.

3 BY THE COURT: No, it's simple. Here is how
4 simple it is. That's the way it is going to be.

5 Get Mr. Veal and return him to the stand.

6 Now you don't have to question him, but that is
7 up to you.

8 BY MR. LUMUMBA: Judge, what is happening here
9 is about as naked as it possibly could be.

10 BY MR. HORAN: It sure is. It's a disgrace to
11 the profession.

12 (MR. FREDERICK VEAL RETURNS TO THE WITNESS
13 STAND.)

14 BY THE COURT: You may proceed.

15 CONTINUING DIRECT EXAMINATION BY MR. LUMUMBA:

16 Q. Did you have a discussion with Mr. Hawkins in Tupelo?

17 A. Yes, sir.

18 Q. And did you say anything to Mr. Hawkins?

19 BY MR. EVANS: Your Honor, I object. We are
20 talking about seven, eight, or nine months after what
21 this motion is here on today. It is not relevant.

22 BY MR. LUMUMBA: It is my belief that what he
23 said has relevance to what happened--

24 BY THE COURT: --I'm going to allow him to
25 answer that question.

26 BY MR. LUMUMBA: Okay.

27 BY MR. LUMUMBA:

28 Q. Did you say anything to Mr. Hawkins?

29 A. Yes, sir.

1 Q. What did you say?

2 A. Well, we got, we got to talking on the case.

3 BY MR. EVANS: Your Honor, I object again to
4 what we got to talking about.

5 BY THE COURT: He cannot testify as to what Mr.
6 Hawkins said. He can testify as to what he said.

7 BY MR. LUMUMBA:

8 Q. Did Mr. Hawkins say something to you?

9 BY MR. EVANS: Your Honor, I object.

10 BY THE COURT: Sustained.

11 BY MR. LUMUMBA: Now wait just a minute. I'm
12 just asking if he said something. I'm not asking
13 what he said. That is not hearsay.

14 BY THE COURT: Okay. That's right.

15 BY MR. LUMUMBA: Thank you, Judge. That is one
16 ruling. Wow, got one.

17 BY MR. LUMUMBA:

18 Q. Okay, did Mr. Hawkins say something to you?

19 BY MR. EVANS: Oh, my gosh.

20 BY MR. LUMUMBA:

21 Q. Did he say something to you?

22 A. Yes.

23 Q. Okay, and did--

24 A. --We both, we both said we wasn't going to testify.

25 BY MR. EVANS: Your Honor, I object.

26 BY THE COURT: Sustained. Mister, you cannot
27 answer until he asks you a question.

28 BY THE WITNESS: Yes, sir.

29 BY MR. LUMUMBA: Okay. Let me put my question

1 out, Judge.

2 Q. And you don't answer until the Judge rules on it;
3 okay?

4 A. Okay.

5 Q. Let me just put this question out. What was it that
6 you said to Mr. Hawkins? I know both of you said something.
7 I'm not asking what both of you said. What was it that you
8 said to Mr. Hawkins?

9 A. I said, I said, "Hawkins, man, this ain't right." I
10 said, "You know that man ain't told us that."

11 Q. And you said, "You know that man ain't told us
12 nothing;" right?

13 A. Uh-huh, Mr. Flowers.

14 Q. "Ain't told us nothing," like you and him; right?

15 A. Uh-huh.

16 Q. And did you say that based upon what he had already
17 told you?

18 BY MR. EVANS: Your Honor, I object.

19 BY THE COURT: That is sustained.

20 BY MR. LUMUMBA: All right.

21 BY MR. LUMUMBA:

22 Q. Okay, now Mr. Veal, now let me ask you this, the last
23 area of inquiry that I have since it has come up. When you
24 talked to me, did you indicate that you were afraid of people
25 connected with this case?

26 A. Yes, sir.

27 Q. Did you indicate that you wanted to talk somewhere
28 other than in the, in Greenwood?

29 A. Yes, sir.

1 Q. And did you go somewhere other--

2 BY MR. HORAN: --Your Honor, he needs to let
3 this witness testify. He is leading him all over the
4 place.

5 BY THE COURT: Sustained.

6 BY MR. LUMUMBA:

7 Q. Okay. At any point in time did my, did me or anybody
8 else in my office coerce you, force you, or do anything to
9 force you to make a statement?

10 A. No, sir. I did it on my own, on my conscience.

11 Q. Okay. At any point in time did anyone affiliated
12 with my office give you any money for the purpose of you making
13 a statement?

14 A. No, sir.

15 Q. Now when you were-- where did you go-- did you come
16 talk to me at another time? I mean--

17 A. --at Greenwood and then I went to Jackson.

18 Q. Okay. And who brought you to Jackson?

19 A. Lawyer Freelon.

20 Q. Okay, did he force you to come?

21 A. No, sir.

22 Q. Did anybody hold you in Jackson, make you stay in
23 Jackson?

24 A. No, sir, because I came back when I got ready, the
25 same day.

26 BY MR. LUMUMBA: Excuse me.

27 (Pause while Defense Counsel confer.)

28 BY MR. LUMUMBA:

29 Q. Now let me ask you this finally. Prior to your time

1 of testifying up in Tupelo, were you ever given anything to
2 look at or to read before you testified?

3 A. They gave me my statement.

4 Q. Statement?

5 A. The statement that I gave, yep. They gave me that to
6 look over that, make sure I said it.

7 Q. Now this is a statement they gave you to look at
8 before you testified?

9 A. Yes, sir.

10 Q. Did they say anything to you about that?

11 A. I'm not sure.

12 Q. Okay. But they gave you a statement; is that
13 correct?

14 A. Uh-hum. They gave me a statement.

15 Q. Was that a written statement or a typed statement?

16 A. Typed statement.

17 Q. In your presence was Mr. Hawkins given anything?

18 BY MR. EVANS: Your Honor--

19 BY THE WITNESS:

20 A. --a statement--

21 BY MR. EVANS: --this is completely irrelevant to
22 what we are here on today.

23 BY MR. HORAN: The question is whether he was
24 planted in the jail or not. What he did prior to his
25 testimony is not a piece of this motion anywhere
26 written on that motion.

27 BY MR. LUMUMBA: You know--

28 BY MR. HORAN: --It has nothing to do with it.

29 BY THE COURT: --Well, the question may be, the

1 question may be though whether that also coerced his
2 testimony when he got to Tupelo. We don't have a
3 jury here today. I will listen to it.

4 BY MR. HORAN: We are going to be here all day.

5 BY THE COURT: Well, that's what we are here
6 for, Mr. Horan.

7 BY MR. HORAN: I guess so.

8 BY THE COURT: All right, Mr. Lumumba.

9 BY MR. LUMUMBA:

10 Q. Go ahead. Was Mr. Hawkins given anything?

11 A. Yes, sir.

12 Q. What was that?

13 A. A statement. His statement to make sure we don't--

14 Q. --Go ahead.

15 A. --we say the same thing on the statement that we had,
16 on the paper when we come up for court.

17 Q. So if I understand what you just told me, you
18 indicated that he was given a statement too to make sure y'all
19 said the same thing when you go to court; is that correct?

20 A. Yeah, when we was in the witness room, they gave us
21 this statement so, you know, so we won't forget nothing, make
22 sure because that has been a while back when we gave a
23 statement.

24 BY MR. LUMUMBA: One second.

25 (Pause while Defense Counsel confer.)

26 BY MR. LUMUMBA: I have no further questions of
27 this witness at this time.

28 CROSS-EXAMINATION BY MR. EVANS:

29 Q. Mr. Veal, do you remember testifying under oath in

1 Tupelo?

2 A. I remember testifying.

3 Q. Do you remember raising your right hand and swearing
4 to God to tell the truth?

5 A. Yes, sir. But I didn't want to testify. Y'all told
6 me I had to testify.

7 Q. Do you remember taking an oath to tell the truth?

8 A. Yes, sir. Not because I wanted to testify.

9 Q. Do you remember on-- no, I didn't ask you if you
10 wanted to. You were subpoenaed there to testify, wasn't you?

11 A. But I told you I still don't want, I wasn't wanting
12 to go in the courtroom.

13 Q. Answer my question.

14 A. Yes.

15 BY MR. LUMUMBA: Well, hold it. He has got a
16 right to finish his-- once he asks a question, he has
17 a right to explain.

18 BY THE COURT: Once he answers he does, but he
19 didn't answer it.

20 BY MR. LUMUMBA: Okay, well, now he can finish
21 what he has got to say.

22 BY THE COURT: You may explain that answer.

23 BY THE WITNESS: Sir?

24 BY THE COURT: You may explain that answer if
25 you want to.

26 BY THE WITNESS:

27 A. Well, I didn't want to testify. They say I didn't
28 have no choice.

29 Q. All right, when you are subpoenaed, you don't have a

1 choice, do you?

2 A. (No response).

3 Q. Do you?

4 A. I guess not.

5 Q. Do you remember on page 466 of the transcript, line
6 7, do you remember saying under oath, "I came forward on my
7 own. Didn't nobody ask me to or nothing.... I sent a
8 letter... to talk to Mr. Banks"?

9 A. Uh, yeah. Y'all told, y'all told me to say that.

10 Q. Y'all told me to?

11 A. Well, y'all said didn't nobody promise you nothing or
12 none of that, which y'all did say it was reward money offered,
13 but y'all told me what you just asked me.

14 Q. Are you saying that you lied under oath?

15 A. No, I am saying I was coerced to lie under oath.

16 Q. Are you saying that you lied under--

17 (Interrupted by person clapping in the
18 courtroom.)

19 BY MR. EVANS: Your Honor, I'm not going to try
20 to talk with folks showing out in the courtroom.

21 **BY THE COURT:** Okay. Mr. Thornburg, anybody
22 that does that again, that kind of display, remove
23 them from the courtroom and hold them until I can
24 tend to them.

25 BY MR. EVANS:

26 Q. Are you saying that you lied under oath? Yes or no?

27 BY MR. LUMUMBA: He is not required to stick to
28 a yes or no--

29 BY MR. EVANS: --Yes, he is.

1 **BY THE COURT:** Yes, he is. He has to answer it
2 yes or no, and then he can explain it.

3 BY MR. LUMUMBA: Then he can explain it, right.
4 I just want that to be clear. Okay.

5 BY THE COURT: That's right.

6 BY MR. EVANS:

7	Q. Answer my question.
---	------------------------

8 A. Say it again, sir.

9 Q. Are you saying you lied under oath?

10 A. Well, yes, sir.

11 Q. All right, good.

12 A. With the explanation that y'all coerced me into
13 lying under oath.

14 Q. When you gave this statement, called the Sheriff and
15 told him this, we didn't even know you existed, did we?

16 A. Banks called Mr. Johnson.

17	Q. Answer my question.
----	------------------------

18 A. Did y'all know I exist. No, sir. I hadn't never
19 seen y'all before.

20 Q. You had never talked with me, and you had never
21 talked to my investigator because you didn't know we existed,
22 and we didn't know you existed; isn't that right?

23 A. No, sir. You are right.

24 Q. And the day this happened, even though now today you
25 are lying and saying different--

26 BY MR. LUMUMBA: --Hold it, hold it, hold it.
27 Wait a minute.

28 BY MR. EVANS: Let me finish my question.

29 BY MR. LUMUMBA: Now look.

1 **BY THE COURT:** He is on cross-examination, Mr.
2 Lumumba.

3 BY MR. LUMUMBA: Objection. He can't call the
4 witness a liar.

5 BY MR. EVANS: I just did.

6 BY MR. LUMUMBA: Oooh. Can you straighten him
7 out, Judge? That sounds, you know.

8 **BY THE COURT:** Have a seat, Mr. Lumumba.

9 BY MR. LUMUMBA: Okay, but look.

10 BY MR. EVANS: May I finish, Your Honor?

11 BY MR. LUMUMBA: No, no. I can object--

12 **BY THE COURT:** Y'all can't talk at the same time
13 because Linda can't take it down.

14 BY MR. LUMUMBA: Can I object? Can I object?

15 **BY THE COURT:** You can object.

16 BY MR. LUMUMBA: My objection is to him sitting
17 up there-- he has got to ask a question. He can't
18 give a speech, and he can't talk about lying under
19 oath.

20 **BY THE COURT:** Well, it's a little late to cut
21 off the speeches, isn't it, Mr. Lumumba?

22 BY MR. LUMUMBA: You are right. The first day I
23 got here I read the transcript and saw you gave quite
24 a few and the prosecution--

25 BY MR. EVANS: --Your Honor, may I proceed--

26 **BY THE COURT:** --But I remind you I am the
27 Judge, Mr. Lumumba. You need to sit down.

28 BY MR. LUMUMBA: The difference is, is now we
29 have got some speeches for justice, and I'm not sure

1 we had any before.

2 BY THE COURT: You need to sit down, Mr.
3 Lumumba.

4 BY MR. LUMUMBA: Okay, all right.

5 BY THE COURT: Okay, Mr. Evans. You can
6 proceed.

7 BY MR. EVANS: Thank you, Your Honor.

8 BY THE COURT: Let's do stick to the question
9 and answer method, okay?

10 BY MR. EVANS: If I can remember where I was.

11 BY THE COURT: All right, sir. Ask your
12 question.

13 BY MR. LUMUMBA: Is my objection sustained about
14 the calling the man--

15 BY MR. EVANS: --Your Honor, may the opposing
16 counsel sit down until I get through asking the
17 questions?

18 BY THE COURT: Let him ask the question, and you
19 can renew your objection if you would like.

20 BY MR. EVANS: Will the Court Reporter please
21 read back the last question that I had asked.

22 BY THE COURT REPORTER: "And the day this
23 happened, even though now today you are lying and
24 saying different--" and then it was interrupted.

25 BY MR. LUMUMBA: That's what I object to; "You
26 are lying."

27 BY THE COURT: Let's just, let's just keep it on
28 the question and answer, Mr. Evans. Just ask him
29 what he did. That's what we need to know.

1 BY MR. EVANS:

2 Q. You said earlier and it was, in fact, true, wasn't
3 it, that at the time you talked to the Sheriff that there were
4 no charges against you? Your sister had already dismissed the
5 charges for stealing her car?

6 BY MR. LUMUMBA: Objection. That is two
7 questions. One is whether or not it was true, and
8 the second question is whether or not he said it.
9 It's two questions, compound question.

10 BY THE COURT: Okay, can you answer that, Mr.
11 Veal?

12 BY THE WITNESS:

13 A. I gave, I gave the statement. My sister hadn't
14 dropped charges then. After I gave the statement, then she
15 came up there and dropped charges. Then I needed a hundred
16 dollars. They let me go on that.

17 Q. Once the charges were dropped, you didn't have a
18 bond, did you?

19 A. No, sir. I had to have a hundred dollars to drop
20 charge fee.

21 Q. What was the hundred dollars for to drop charges if
22 your sister was the one that dropped the charges?

23 A. You have to pay a hundred dollars for a person to
24 drop charges.

25 Q. And you were in jail for stealing your sister's car?

26 A. That's what she said.

27 Q. Do you remember telling me, my assistant, Kevin
28 Horan, John Johnson, and I believe Robert Jennings that on the
29 day we were in Kosciusko that the opposing counsel, Mr.

1 Lumumba, had offered for you to go to Chicago so that you could
2 avoid being subpoenaed to testify in Tupelo?

3 A. I don't remember. I don't remember.

4 Q. You don't remember that?

5 A. No.

6 Q. Do you remember telling us - and I will remind you
7 that this is on tape - that John Gilmore offered you five
8 hundred dollars to change your story in this case before we
9 went to trial in Tupelo?

10 A. I said that. I did say that. I did say that.

11 Q. So you will admit the ones that are on tape?

12 A. Well, I admit to any of them that's true. I also
13 admit that y'all kept pesterizing me and trying to get this man
14 convicted so--

15 Q. Kept doing what to you?

16 A. Well, I say pesterizing, bothering me. The man ain't
17 told me nothing. I was coerced into saying. The man looked
18 out on me when I was in jail. The man ain't did nothing to me,
19 and I ain't got nothing against that man, and the man didn't
20 tell me that. That's all I can say. I don't believe he did
21 it. That's the best I can put it. Y'all were offering money
22 and different things. Yeah, I lied and said he said it,
23 coerced into lying.

24 Q. So you admit that you are a liar?

25 A. I admit I was coerced into lying, listening at
26 y'all, and promises.

27 Q. How about this trip to Chicago? Why did you say that
28 Mr. Lumumba tried to get you to go to Chicago so that we
29 couldn't subpoena you?

1 A. I don't, I don't remember that. Y'all subpoenaed me
2 the same day I was in Kosciusko, gave me two subpoenas for
3 today and September something, the 8th.

4 Q. As a matter of fact, when you told us that, I told my
5 victim's assistance coordinator to issue a subpoena for you
6 right then before you went to Chicago, didn't I?

7 A. Well--

8 Q. Do you remember that?

9 A. --I didn't say I was going to no Chicago.

10 Q. Do you remember that?

11 A. Yes, sir. I remember she giving that subpoena to
12 me. You said me and Hawkins is y'all's only key witness, that
13 he is saying to us that he did it. That's the only thing
14 convicted Mr. Flowers.

15 Q. Where are you staying now?

16 A. Sir?

17 Q. Where are you staying now?

18 BY MR. LUMUMBA: I object to that other than if
19 he is just asking him about the city.

20 BY THE WITNESS:

21 A. Well, I'm scared to tell you where I am staying now
22 since I am testifying.

23 BY THE COURT: Overruled--

24 BY THE WITNESS: --since I changed my statement.

25 BY THE COURT: He is on cross-examination.

26 BY MR. EVANS:

27 Q. Where are you staying now?

28 A. Here and there, in the streets. I ain't got nowhere
29 to stay.

1 Q. Where are you staying?

2 A. Specific--

3 Q. Where do you stay at night?

4 A. At night?

5 BY MR. LUMUMBA: Judge. Hold it, hold it, hold
6 it, hold it. Why is that relevant? I object. It's
7 irrelevant, and plus his security might be involved.

8 BY THE COURT: Overruled. Go ahead.

9 BY MR. LUMUMBA: Excuse me. Can I make my
10 argument first, please?

11 BY THE COURT: Yes, sir.

12 BY MR. LUMUMBA: You have a large number of
13 people in this courtroom whose interests at this
14 point are inimicable to his. And so the point that
15 I'm making there is no possible relevance to that
16 issue of where he is staying; in terms of the city,
17 maybe; if he is staying in a house or something else,
18 but there is no relevance. Now if the police were to
19 come in here and tell you they had a key witness and
20 they did not want that witness' identity-- or not the
21 identity, the residence revealed, nine chances out of
22 ten you would grant them that. All I am asking you
23 is even steven; use the same yard stick. There is no
24 relevance to this question. The possible danger to
25 the individual far outweighs the relevance of that
26 question. Well, maybe if he can approach the bench
27 and tell me why that is relevant, then we can deal
28 with it. But it's no, there is no -- on its face,
29 there is no relevance to it.

1 **BY THE COURT:** Why is it relevant?

2 BY MR. EVANS: To start with, I want to find out
3 if Mr. Lumumba is putting him up somewhere.

4 **BY THE COURT:** Overruled. Go ahead.

5 BY MR. EVANS: Also, I need to know--

6 **BY THE COURT:** --Let him answer the question
7 though.

8 BY MR. LUMUMBA: You mean like they put him up
9 in Tupelo? Like that?

10 BY MR. HORAN: You have got to ask the question.

11 **BY THE COURT:** No, the state put him up in
12 Tupelo. The court paid for that.

13 BY MR. EVANS:

14 Q. You may answer.

15 A. Where I stay?

16 Q. Yeah.

17 A. I ain't got nowhere to stay. I'm on the streets. I
18 told you that. That's why I was begging y'all to give me my
19 money.

20 Q. That's exactly right. You were, weren't you?

21 A. I told you I was on the streets.

22 Q. You were asking us for money, weren't you?

23 A. I was asking you for the money that y'all promised
24 me.

25 Q. And we kept telling you, did we not, that we had no
26 control over any reward money?

27 A. You told me after he get convicted a second time,
28 y'all will give the money. Every witness, everybody y'all went
29 to, y'all came to them with a thirty thousand dollar reward.

1 Q. Do you remember me telling you several times when you
2 would call bothering me that I had absolutely nothing to do
3 with any reward? Do you remember me telling you that?

4 A. Yeah, you said you didn't have nothing to do with
5 the reward, but you kept promising the reward going to be
6 given.

7 Q. Now how did I promise you something that I was
8 telling you I had no control over?

9 A. Oh, what you saying; y'all didn't promise no thirty
10 thousand dollars reward? Y'all didn't promise me no money?

11 Q. That's exactly right. That's what the truth is,
12 isn't it?

13 A. Well--

14 BY MR. LUMUMBA: --Excuse me. Excuse me,
15 Judge. I can understand the witness asking him that
16 question, but I think he should know better than to
17 answer it. I object to him testifying. That means
18 the DA.

19 BY THE COURT: Okay, well, there is no jury
20 here. Let's move on.

21 BY MR. EVANS:

22 Q. Who was threatening to shoot you in the head if you
23 testified against Curtis Flowers?

24 A. Who threatened to shoot me in the head?

25 Q. A few minutes ago you testified--

26 A. --I said I had people--

27 Q. --Let me finish my question. A few minutes ago on
28 direct examination you testified that I had been threatened; I
29 was going to get a bullet in the head if I testified against

1 Curtis Flowers. And I want to know who was threatening to put
2 a bullet in your head if you testified against Curtis Flowers?

3 A. I'm talking about on the streets. I was talking
4 about on the street, people threatening to kill me.

5 Q. Who?

6 A. I don't know them.

7 Q. So you are saying--

8 A. --One of them got behind me with a ski mask--

9 Q. --that you were lying about that too?

10 A. No, I ain't lying about nothing I say.

11 Q. Then who threatened to put a bullet in your head if
12 you testified against Curtis Flowers?

13 A. I had several people threaten to kill me.

14 Q. Who?

15 A. I don't know their names. I seen one with a ski mask
16 behind the house, and I took off to running.

17 Q. So you made that up too, didn't you?

18 A. No, I didn't make that up.

19 Q. When were you carried to Jackson?

20 A. I don't know exactly what day, sir.

21 Q. You were also carried over to Mr. Maurice Hawkins'
22 house, weren't you?

23 A. Yes, sir.

24 Q. Who carried you over there?

25 A. Mr. Freelon.

26 Q. And you tried to get Maurice to change his story and
27 lie for another black fellow, didn't you? Wasn't that the way
28 you put it?

29 A. I didn't try, I didn't try to get him to change his

1 story. I just said, That is wrong; said got an innocent man on
2 death row for nothing. That's what I said.

3 Q. Didn't you and Mr. Freelon both tell him--

4 BY MR. LUMUMBA: --Wait a minute. Objection.
5 Objection. At this point there has been a large
6 amount of inquiry into something that he said when I
7 was cross-- asking him questions irrelevant. Now it
8 doesn't sound like any of this is going toward
9 whether or not Maurice Hawkins or him was used as an
10 instrument to get a statement. So at this point I'm
11 objecting. You know, I have been very tolerant. He
12 has certainly inquired into some of the areas that I
13 inquired too that he objected to, by the way, and you
14 sustained the objections. You sustained the
15 objections and said this was only about a hearing as
16 to what, whether or not he was used to get a
17 statement. So at this point he is way afoul of
18 that. I object.

19 BY THE COURT: Well, I have got the issue before
20 me now as to whether the other side did the same
21 thing. So I'm going to allow it to come in. We will
22 make a record on it.

23 BY MR. LUMUMBA: Well, what difference does that
24 make, whether the other side did the same thing?

25 BY THE COURT: Well, I don't think you can
26 coerce statements any more than anybody else, Mr.
27 Lumumba.

28 BY MR. LUMUMBA: Well, look; let me see this,
29 Judge. See, Judge, you all-- I mean let--

1 respectfully, I think you have lost the issue. The
2 issue to this hearing, unless I am wrong, and if I am
3 wrong, I stand to be corrected because that is okay
4 if I am. I respect that. But I understand the issue
5 to be whether or not this gentleman and Hawkins were
6 used as tools to get a statement. Now, and if they
7 were, that is one thing. So if they were used as
8 tools to get a statement, it don't make any
9 difference what I did.

10 **BY THE COURT:** Except that that would--

11 BY MR. LUMUMBA: --Plus, I haven't heard any
12 testimony saying I coerced anybody to do anything.

13 **BY THE COURT:** No, but he is entitled-- the fact
14 is you raised it somewhat. But he is entitled to do
15 that on cross-examination because his credibility is
16 one thing at issue.

17 BY MR. LUMUMBA: Well, his credibility is at
18 issue on that issue. You can't ask him everything
19 under the sun on the suppression hearing. Now, but
20 if the Court's ruling is that we, that this broad
21 issue of whether the statements were true or whether
22 somebody coerced him or Hawkins is at issue, then I
23 will accept that. If that is what we are talking
24 about, then I will remember that when I get up on
25 redirect.

26 **BY THE COURT:** Okay, well, I'm going to allow
27 him to go into it, and, of course, on redirect you
28 are entitled to go back over anything that he raises
29 on cross.

1 BY MR. LUMUMBA: Okay, good.

2 BY MR. EVANS: May I proceed now?

3 BY THE COURT: Uh-hum.

4 BY MR. EVANS:

5 Q. Did you, in fact, try to get Maurice Hawkins to lie?

6 A. Lie?

7 Q. That's my question. I think you heard me--

8 A. --No, sir. I ain't try to get him to lie. No, sir.

9 Q. So I will know what you are saying today, I want to
10 go into this area. You did, in fact, give a statement, did you
11 not, that Curtis Flowers told you that he killed the people at
12 Tardy Furniture?

13 A. In the first statement, yes.

14 Q. And who did you give that statement to?

15 A. Mr. Johnson.

16 Q. Before you talked to Mr. Johnson, you told Ricky
17 Banks what Curtis Flowers had told you, did you not?

18 A. I was sent in there to get information.

19 Q. Answer my question.

20 A. Say it again, sir.

21 Q. Listen to it--

22 BY MR. LUMUMBA: --The question is ambiguous.
23 First of all, did he tell Mr. Banks--

24 BY MR. EVANS: --Your Honor, if this is an
25 objection--

26 BY THE COURT: Yeah--

27 BY MR. LUMUMBA: --I'm objecting.

28 BY THE COURT: Let's let-- reask your question--

29 BY MR. LUMUMBA: --I'm objecting--

1 **BY THE COURT:** --If he can answer it, that is
2 fine.

3 **BY MR. EVANS:** I didn't get through with it,
4 Your Honor.

5 **BY MR. LUMUMBA:** Go ahead; I'm sorry.

6 **BY THE COURT:** Okay.

7 **BY MR. EVANS:**

8 Q. Before you talked to Mr. Johnson, you gave the
9 sheriff [sic] to Ricky Banks; is that right? You told Ricky
10 Banks what Curtis Flowers--

11 A. --He called the investigator in. I did say he said
12 that; yes, sir. I did, I was--

13 Q. --Let me finish my question.

14 **BY MR. LUMUMBA:** Let him finish answering--

15 **BY MR. EVANS:** --Let me finish my question.

16 **BY THE COURT:** He has got to finish the
17 questions one, before you object and two, before you
18 answer; okay?

19 **BY THE WITNESS:** Okay.

20 **BY MR. LUMUMBA:** Well, he had asked the
21 question, Judge.

22 **BY THE COURT:** No, he hadn't.

23 **BY MR. LUMUMBA:** He didn't like what he was
24 getting. That's the problem. Okay. Go ahead,
25 Judge.

26 **BY THE COURT:** All right, Mr. Evans.

27 **BY MR. EVANS:** Thank you, Your Honor.

28 **BY MR. EVANS:**

29 Q. Mr. Veal.

1 A. Yes, sir.

2 Q. Had you told Sheriff Banks what Curtis Flowers told
3 you before John Johnson ever came to Greenwood to talk to you?

4 BY MR. LUMUMBA: Objection. Now can I object?

5 **BY THE COURT:** Yes. On what grounds?

6 BY MR. LUMUMBA: My objection is that the
7 question assumes a fact that is not only not in
8 evidence, but contrary to the evidence. He has
9 already said that Mr. Flowers didn't tell him
10 anything.

11 **BY THE COURT:** Overruled. Answer the question
12 if you can.

13 BY THE WITNESS:

14 A. Well, I didn't give no statement until he called an
15 investigator there.

16 Q. I didn't ask about a statement. Did you tell the
17 Sheriff what Curtis Flowers told you?

18 A. Yeah, I told him. I didn't say Curtis-- I said
19 Curtis Flowers told me that, but I was lying because Banks sent
20 me in there to get information from him. I was put in there
21 specific to get something out of Curtis Flowers because they
22 didn't have nothing on him.

23 Q. Are you saying today that Sheriff Ricky Banks told
24 you what to say?

25 A. I didn't say he told me what to say. I said he sent
26 me in there to get information from Curtis Flowers. That's
27 what I was put in there for.

28 Q. You were put in jail because your sister had you
29 arrested?

1 A. I wasn't put in the cell with him. He put me in the
2 cell with him. I was in another cell. I was trying to get
3 out. He asked me, said, "Well, you can help yourself by going
4 in there, see can you get any information from Curtis
5 Flowers."

6 Q. So you are not saying that Sheriff Banks tried to
7 tell you what to say, are you?

8 A. No, sir.

9 Q. Sheriff Banks did not try to tell you what he wanted
10 you to go in there and find out, did he?

11 A. Yes, sir. Find out where the gun was. He asked me,
12 said, "Could you find out, get him to tell you what he did with
13 the gun," and different things, yes, sir, in the case.

14 Q. Well, if that was so, why wouldn't you have found
15 that out?

16 BY MR. LUMUMBA: Well, it might be because --
17 objection.

18 BY MR. EVANS: Your Honor, I don't want any
19 maybe. If he has an objection--

20 BY MR. LUMUMBA: --No, no--

21 BY MR. EVANS: --he can state his objection, but
22 he cannot--

23 BY MR. LUMUMBA: --No, no--

24 BY MR. EVANS: --Let me finish. He cannot tell
25 this witness what--

26 BY MR. LUMUMBA: --Can he interrupt--

27 BY MR. EVANS: --he wants him to say.

28 BY MR. LUMUMBA: --Can he interrupt my objection
29 to tell me what I can do, what I can say?

1 **BY THE COURT:** State your, state your objection.

2 BY MR. LUMUMBA: Yeah, I thought that was the
3 way it worked.

4 **BY THE COURT:** State your objection.

5 BY MR. LUMUMBA: My objection is that here
6 again, he is harassing this witness. The witness has
7 testified that the man didn't tell him anything. So
8 now how is he going to go-- now he is asking the
9 witness why didn't you get information on the gun.

10 BY MR. HORAN: Is this an objection?

11 BY MR. LUMUMBA: It is asked and answered. It's
12 redundant and--

13 **BY THE COURT:** --The objection is overruled.

14 BY MR. EVANS:

15 Q. Answer my question.

16 A. Why I didn't give the information about the gun?

17 Q. Yeah, if that's what you were asked to go in there
18 and find out, why didn't you go in there and find that out?

19 A. He had me to find out whatever I could get, but he
20 specifically wanted to know where the gun was. Specific, he
21 wanted to know where the gun was.

22 Q. All right.

23 A. He asked me to get anything I could out of Curtis
24 Flowers.

25 Q. Answer my question--

26 A. --I didn't even say nothing out of the way to Curtis
27 Flowers. Me and him played dominoes. I didn't have nobody
28 sending me nothing. He gave me cigarettes and gave me food and
29 everything.

1 Q. There is nothing in your statement about what Curtis
2 Flowers did with the gun, is it?

3 A. No, sir.

4 Q. Yet you are saying today that that is what the
5 Sheriff asked you to go back there and find out specifically?

6 A. Specifically.

7 Q. And you didn't do that?

8 A. No, sir. I didn't do none of what they told me.

9 Q. The reason you didn't do none of what they told you
10 is because you weren't sent back there to talk to him, were
11 you?

12 A. Yeah, I was sent back there. I wasn't in the cell
13 with him; they put me in the cell with him. I stayed in there
14 three days; I was back on the streets. (Pause) All this just
15 going back to that you thought I--

16 BY THE COURT: --Don't answer until he asks you
17 a question.

18 BY THE WITNESS: Okay.

19 BY MR. LUMUMBA: Well, I don't think he finished
20 yet, Judge.

21 BY THE COURT: Well, yeah, he did. He
22 finished. Wait until the next question.

23 BY MR. EVANS:

24 Q. What else are you saying the Sheriff told you?

25 A. Sir?

26 Q. What else are you saying the Sheriff told you besides
27 find out about the gun--

28 A. --I ain't, I'm going by, I'm saying whatever you ask
29 me. That's what the Judge told me to say.

1 Q. Well, answer the question then.

2 A. I'm answering the question when you ask me.

3 Q. What else-- listen to my question. What else are you
4 saying that Sheriff Banks told you other than find out what he
5 did with the gun?

6 BY MR. LUMUMBA: Objection. The question is
7 ambiguous. It needs to state a time and place where
8 he is talking about--

9 BY MR. EVANS: --I don't believe he is too
10 stupid that he doesn't understand the question.

11 BY THE COURT: Wait a minute; wait a minute, Mr.
12 Evans. Let him finish his objection.

13 BY MR. LUMUMBA: All right. I don't think he is
14 stupid at all but--

15 BY THE WITNESS: --I wasn't stupid nine months
16 ago.

17 BY THE COURT: Wait a minute. Everybody be
18 quiet. Mr. Lumumba, you have got the floor right
19 now.

20 BY MR. LUMUMBA: But the point, but the point
21 is, is that I am just asking that the question be
22 specific to time and place. In other words, is it an
23 open question? Did Sheriff Banks tell him anything
24 at any time, or did he tell him something at a
25 particular time?

26 BY THE COURT: That is overruled. I think in
27 the context of this question he knows when it is.

28 BY MR. LUMUMBA: Okay.

29 BY THE COURT: Now you can answer it, Mr. Veal.

1 BY THE WITNESS:

2 A. Yes, sir. I was told to go in there and get some
3 information out of Curtis Flowers, specifically where the gun,
4 what he did with the gun.

5 Q. And that's it?

6 A. That's it.

7 Q. The information you came back with is information
8 that only the killer could have known, wasn't it?

9 A. Well--

10 BY MR. LUMUMBA: --Objection--

11 BY THE WITNESS:

12 A. That, that was all over the media, the papers and
13 everything. Everything in that statement was in the paper just
14 about.

15 Q. Tell me where it came out in the paper that he killed
16 the lady first and killed the little boy last? Tell me.

17 A. He didn't tell me that.

18 Q. That's what you put in your statement, wasn't it?

19 A. Yeah, I put in my statement.

20 Q. How did you know that there was a lady and a little
21 boy there?

22 A. It was nationwide. Who couldn't have got that
23 information, four people were killed?

24 Q. How did you know that he went to Texas?

25 A. That was in the paper--

26 Q. --worked at Piggly Wiggly?

27 A. That was in the paper.

28 Q. Tell me what paper that was in that he was working at
29 Piggly Wiggly in Texas.

1 BY MR. LUMUMBA: Well, Judge, objection. First
2 of all, he wasn't working at Piggly Wiggly in Texas.
3 So if it was in the paper, it was inaccurate, and if
4 he made the statement, it was inaccurate--

5 BY MR. HORAN: --Does he have an objection, Your
6 Honor? Does he have an objection to the question?

7 BY THE COURT: --Well, what-- I have got this
8 question though. Where are we going with this? I
9 mean we are not at trial.

10 BY MR. EVANS: Your Honor, I am just trying to
11 find out what he is alleging. I think we have got to
12 know at this point, and I think the Court has even
13 got to know what his, what his allegations really
14 are.

15 BY MR. LUMUMBA: Well, Judge, I think-- my
16 objection is it's going afoul, it's gone beyond the
17 point of the inquiry in the issue.

18 BY THE COURT: I think we are getting a little
19 far afield, Mr. Evans. Let's kind of centralize it a
20 little bit. I get a pretty good gist of where it's
21 going.

22 BY MR. EVANS:

23 Q. When we went to Kosciusko and you told us about Mr.
24 John Gilmore offering you five hundred dollars to change your
25 story, why did John Gilmore offer you five hundred dollars to
26 change your story?

27 A. I couldn't tell you.

28 Q. Where were you when he offered you five hundred
29 dollars to change your story?

1 | A. What is the purpose of all this?

2 | BY THE COURT: Answer the question.

3 A. Oh. Where I was; I was in Greenwood.

4 Q. Did he come to see you?

5 A. I ain't tell you-- I said a man stopped me and
6 offered me five hundred dollars. I said it was a tall man.
7 You said it must have been John Gilmore. You said that.

8 Q. Do I have to remind you that that statement was on
9 tape?

10 A. Well, we need to get the tape.

11 Q. Do I have to remind you of that?

12 A. Yes, sir. We need to get the tape.

13 BY MR. LUMUMBA: May I ask why I don't have a
14 copy of the tape since he is a witness, and they are
15 supposed to have given us all witnesses' statements?
16 He is a witness on their list. If they have got a
17 taped statement, where is the statement, and I ask
18 that the hearing stop until we get our discovery. He
19 sat up here and lied to you a few minutes ago, said
20 we got everything.

21 BY THE COURT: Wait a minute.

22 BY MR. EVANS: You are not going to call me a
23 liar in the courtroom.

24 BY MR. LUMUMBA: I'm not calling you a liar; he
25 was--

26 BY THE COURT: --Wait a minute.

27 BY MR. EVANS: No, you won't.

28 BY THE COURT: --Wait a minute, both of you.

29 BY MR. LUMUMBA: What you going to do?

1 **BY THE COURT:** Both of you.

2 BY MR. EVANS: You will find out.

3 BY MR. LUMUMBA: Please. Please. It must be
4 something legal. I know he ain't talking about
5 nothing physical.

6 BY MR. EVANS: I think the Bar Association--

7 **BY THE COURT:** --Wait a minute--

8 BY MR. EVANS: --has some rules down there--

9 **BY THE COURT:** --Wait a minute; wait a minute.
10 Y'all are not going to do this in this courtroom. I
11 will make both of you leave. We will go with Mr.
12 Horan and Mr. Freelon.

13 BY MR. LUMUMBA: Well, look, Judge--

14 **BY THE COURT:** --Y'all better get ready to suit
15 up. (Laughter).

16 BY MR. LUMUMBA: All I am saying, all I am
17 saying is this. All I am asking you now, we now know
18 that there is statements that we don't have. It
19 seems to me that that runs contrary to statements
20 that we just heard saying that we had all the
21 statements.

22 BY MR. EVANS: He better read the Rules.

23 BY MR. LUMUMBA: Now if we have all the
24 statements, why don't we have a statement of him
25 talking about John Gilmore trying to give him some
26 money?

27 BY MR. EVANS: If Mr. Lumumba can hear as well
28 as he can talk, earlier today I made the comment when
29 I was talking about discovery, that we do have proof

1 that one of the defense lawyers offered money to this
2 witness, and that discovery would be given to him as
3 soon as we could. And I do not appreciate him
4 calling me in open court a liar at all.

5 **BY THE COURT:** Well, I don't appreciate either
6 one of you calling either one of you anything else.
7 I wish you would just stick to the facts, and let's
8 get on, let's get on with trying this case or getting
9 ready to try it. He is going to furnish you that
10 copy of that statement. That's what he said.

11 **BY MR. LUMUMBA:** Well. Okay, well, then I would
12 ask that we have a chance to listen to it before we
13 continue this hearing. This would have been the time
14 to have it. I am entitled to have this information
15 in order to ask any more--

16 **BY MR. HORAN:** --He is not even entitled to it.

17 **BY THE COURT:** Wait a minute, Mr. Horan. Now
18 you just let the others do the talking.

19 **BY MR. HORAN:** All right.

20 **BY THE COURT:** It's not your time.

21 **BY MR. HORAN:** For what it's worth.

22 **BY MR. LUMUMBA:** What I'm trying to say, Judge,
23 is that it could be information that could inform me
24 for the purposes of this hearing, and so I am
25 entitled to have it. I ask that I be given to it
26 prior to the completion of this hearing, even if it
27 requires for a recess to another day.

28 **BY MR. EVANS:** Your Honor, we are talking about
29 not witness information. We are talking about

1 information where defense attorneys in this case have
2 attempted to cause someone to lie by offering them
3 money. That is not discoverable information, but it
4 is information that may need to go to the State Bar.

5 BY MR. LUMUMBA: It is discoverable by me. Now
6 you know, he is talking about somebody named John
7 Gilmore offering him money to testify or to change
8 his story. Now, you know, I have met Mr. Gilmore.
9 He is a nice man, but I didn't meet him until I came
10 into the case. Apparently, if this is true, which
11 you know, if this-- plus the witness is saying he
12 don't even know it was John Gilmore. But apparently,
13 if there is anything to do with it, it happened long
14 before we got here. And if it happened long before
15 we got to it, we are entitled to know. And it has to
16 do with this case, and I am wondering why it hadn't
17 went to the State Bar yet if they thought it was
18 true.

19 BY THE COURT: Okay, I'm going to-- well, if I'm
20 going to reserve my ruling on whether you get
21 furnished that, I will rule on that before the
22 hearing is over. We are going to continue with the
23 hearing.

24 BY MR. EVANS: Your Honor, I don't have any more
25 questions on this.

26 BY MR. HORAN: Doug. Doug.

27 (State's Counsel confer briefly.)

28 CONTINUING CROSS-EXAMINATION BY MR. EVANS:

29 Q. Mr. Veal, how many times since Mr. Lumumba and Mr.

1 Freelon have been in this case have either one of them or
2 anyone that they have sent interviewed you?

3 A. How many times? One-- twice.

4 Q. Where were those?

5 A. They came to Greenwood, and I went to Jackson.

6 Q. One time in Greenwood and one time in Jackson?

7 A. Well, I talked to them more than one time in

8 Jackson. I stayed in Jackson four days.

9 Q. Stayed in Jackson four days?

10 A. Yep.

11 Q. Who put you up in Jackson for four days?

12 A. I stayed at a house.

13 Q. Whose house?

14 A. I don't, I don't really know his name. But I stayed
15 in a house four days.

16 Q. Why do you not know the name of the person you stayed
17 in his house?

18 A. He had an old funny name, like an African name.

19 Q. Well, did Mr. Lumumba or Mr. Freelon one put you up
20 there?

21 A. They, they referred me to a friend. I told them I
22 was paranoid; I was scared. I was scared in Greenville for my
23 life, and yeah, they put me up with, with a friend that they
24 knew, yeah.

25 Q. So they put you up with a friend?

26 A. Yeah.

27 Q. That friend take care of you while you was down
28 there?

29 A. Oh, didn't nobody take care of me. I had money when

1 I went down there.

2 Q. Where did you get it?

3 A. Where I get it? I got family. I got a mother.

4 Q. Where?

5 A. My mother in Chicago.

6 Q. That's right. You don't have any family around
7 here--

8 A. --My daddy left with \$75,000 when he passed.

9 Q. Then why are you living on the street?

10 A. I can't get along with my sisters.

11 Q. Well, if you had \$75,000, don't you think--

12 A. --I ain't say--

13 Q. --you could find some place to live?

14 A. I said my mother had \$75,000. My mother got
15 \$75,000. I didn't get a dime.

16 Q. You said he left it to you?

17 A. No; no, sir. I said he left it to my mother,
18 \$75,000.

19 Q. Well, let's get it straight then.

20 A. Well, he left my mother \$75,000.

21 Q. Why do you live on the street?

22 A. That's by my choice.

23 Q. But you didn't have to live on the street when you
24 were down in Jackson talking to them, did you?

25 A. I didn't want to come back for a couple of days. I
26 told them I needed to get my head together.

27 Q. Uh-hum. And while you were interviewed, how many
28 times did they tape record you?

29 A. They didn't tape record me but once.

1 Q. When was that?

2 A. When they interviewed me.

3 Q. Which interview?

4 A. The one in Jackson.

5 BY MR. EVANS: Your Honor, at this point even
6 though it is kind of out of line, I would ask that we
7 be furnished any tape recorded statements that the
8 Defense has made. This is a motion that I have been
9 making for months and months in this case, and we
10 have none.

11 BY THE COURT: Okay, well, I will rule on that
12 when I rule on the other.

13 BY MR. EVANS: I don't have any further
14 questions.

15 BY MR. LUMUMBA: We have no other questions for
16 this witness, Judge.

17 BY THE COURT: Mr. Veal, you need to go back--

18 BY MR. LUMUMBA: --Well, let me say this. I
19 reserve the right to recall this witness subsequent
20 to Mr. Hawkins being on the stand.

21 BY THE COURT: Okay. I reserve the right to
22 rule on it at that time.

23 BY MR. LUMUMBA: Okay.

24 BY THE COURT: Mr. Veal, you can go back there.

25 WITNESS LEAVES COURTROOM.

26 BY THE COURT: Linda, how are you?

27 BY THE COURT REPORTER: Fine.

28 BY THE COURT: You all right? Okay, who do you
29 have next?

1 BY MR. LUMUMBA: Judge, I think that I should be
2 entitled to get this statement before we continue. I
3 mean, you know, that is what I would request. You
4 can rule on that. I think that I should get the
5 audio taped statement, and let me just say this,
6 Judge. I don't think they are entitled to anything
7 from us, and can I explain why? I mean if you would
8 like me to or--

9 BY THE COURT: No, I don't want to rule on this
10 at this time.

11 BY MR. LUMUMBA: Okay, you don't want to rule on
12 whether they should give us the statement either?

13 BY THE COURT: Not at this time.

14 BY MR. LUMUMBA: Okay, so you are ruling that we
15 are not entitled to it right now?

16 BY THE COURT: Yes, sir.

17 BY MR. LUMUMBA: Okay. Okay, I would call to
18 the stand-- (Pause) I will call Mr. Hawkins to the
19 stand.

20 MAURICE HAWKINS,

21 a black male called to testify as a witness on the motion by
22 the Defendant, having been previously sworn, came into the
23 courtroom and sat on the witness stand where there was the
24 following:

25 BY MR. LUMUMBA: Judge, let me ask you this.
26 Does your ruling stand that you are not going to
27 allow me to impeach Mr. Hawkins if, in fact, he says
28 something which I have extrinsic evidence to
29 impeach?

1 **BY THE COURT:** One, I have not ruled that I
2 will-- on that one way or another. That has not been
3 presented to me, but he is your witness.

4 **BY MR. LUMUMBA:** Okay. But with--

5 **BY THE COURT:** --You can probably, you can ask
6 that he be a hostile witness, and you can question
7 him then.

8 **BY MR. LUMUMBA:** No, no. What I'm asking you is
9 if I'm going to be allowed to call Mr. Veal back to
10 the stand in order to impeach Mr. Hawkins, if Mr.
11 Hawkins says something which is contrary to what he
12 told Mr. Veal.

13 **BY THE COURT:** No, what I'm telling you is I'm
14 going to rule on that at the time.

15 **BY MR. LUMUMBA:** You have already ruled on it
16 once before time. So I mean if you are now, now
17 changing that and reserving-- you already told me I
18 wasn't going to be able to recall Mr. Veal.

19 **BY THE COURT:** I don't think that is what I
20 said, Mr. Lumumba, and what I'm telling you now is
21 after this witness testifies, if you can establish
22 certain things, you may can recall him. We will just
23 cross that bridge when we get to it.

24 **BY MR. LUMUMBA:** Okay, well, let me ask you
25 this. Is whatever you said prior to now, what is on
26 this record, does that stand, or are you now making a
27 ruling that you have not ruled on that?

28 **BY THE COURT:** Whatever I have said is whatever
29 I have said. You just--

1 BY MR. LUMUMBA: --I mean is that, is that the
2 rule of this case?

3 BY THE COURT: I don't believe I can be any
4 clearer than what I have just said.

5 BY MR. LUMUMBA: Okay, but what you-- no, no.
6 See, it has something to do with the order I call my
7 witnesses. All I am asking you to be quite clear,
8 what I believe that you have said on this record -
9 and we can check the record if we need to - is that I
10 will not be able to recall Mr. Veal in order to
11 impeach Mr. Hawkins. Now if that stands, that means
12 something about my order of proof. If it doesn't
13 stand, then we will go with that.

14 BY THE COURT: Okay. I'm ruling that you can't
15 recall him.

16 BY MR. LUMUMBA: I cannot recall him?

17 BY THE COURT: Uh-hum.

18 BY MR. LUMUMBA: To impeach Mr. Hawkins?

19 BY THE COURT: Uh-hum.

20 BY MR. LUMUMBA: Okay--

21 BY THE COURT: --State your name for the record,
22 please, sir.

23 BY MR. LUMUMBA: Okay, I don't have any
24 questions of Mr. Hawkins.

25 BY THE WITNESS: Maurice Hawkins.

26 BY THE COURT: Y'all got any questions of him?

27 BY MR. EVANS: No.

28 BY THE COURT: Okay, you may return to the
29 witness room--

1 BY MR. LUMUMBA: --One second. One second. Let
2 me ask my co-counsel.

3 (Pause while Defendant's Counsel confer.)

4 BY MR. LUMUMBA: Okay, I will ask Mr. Hawkins a
5 couple of questions.

6 DIRECT EXAMINATION BY MR. LUMUMBA:

7 Q. Mr. Hawkins, what's your first name?

8 A. Maurice.

9 Q. You used to use drugs, man?

10 BY MR. EVANS: Your Honor, that is not relevant
11 to what we are here on.

12 BY THE COURT: That's right. Sustained.

13 BY MR. LUMUMBA:

14 Q. Did you use drugs--

15 BY MR. EVANS: --Your Honor, that is not
16 relevant.

17 BY MR. LUMUMBA: Well, let me--

18 BY THE COURT: --Let him finish the question
19 now.

20 BY MR. LUMUMBA: That's right.

21 BY MR. LUMUMBA:

22 Q. You testified in this court before; right?

23 A. Yeah.

24 Q. Huh?

25 A. Yes.

26 Q. All right, okay, and you testified in the case with
27 Curtis Flowers; is that correct?

28 A. Yes.

29 Q. You were a drug user at that time, weren't you?

1 BY MR. EVANS: Your Honor, that is not relevant,
2 and it has absolutely nothing to do with the motion
3 we are here on today.

4 **BY THE COURT:** Sustained.

5 BY MR. LUMUMBA: It doesn't have anything to do
6 with whether he is telling the truth, Judge?

7 **BY THE COURT:** Sustained.

8 BY MR. LUMUMBA:

9 Q. Mr. Hawkins, did you at some point communicate with
10 the Sheriff, Mr. Banks?

11 A. Communicate how?

12 Q. Talk to him.

13 A. After I went to court.

14 Q. Did you talk to him before you went to court?

15 A. No.

16 Q. You never talked to him while you were in Leflore
17 County Jail?

18 A. No.

19 Q. All the time you were there?

20 A. No.

21 Q. Did you ever send him a letter while you were there?

22 A. No.

23 Q. Did you send him a letter when you got out?

24 A. No.

25 Q. Did you ever make a statement to him?

26 A. I told him I needed to talk to him after I was going
27 to my probation officer.

28 Q. Did you talk to him?

29 A. Yes, I talked to him.

1 Q. And when you talked to him, did he write down what
2 you said?

3 A. I don't know.

4 Q. Did he--

5 A. --because they took me on up to my probation
6 officer. I don't know what he wrote down.

7 Q. Did he tape what you said?

8 A. He listened to me.

9 Q. Okay, but you don't know whether he talked to-- now
10 I'm just trying to see. You were awake when you talked to him;
11 right? Wide awake?

12 A. Yeah.

13 Q. Were you on drugs then?

14 A. I was locked up then--

15 BY MR. EVANS: --Your Honor, that is not
16 relevant.

17 BY THE COURT: Well, it might be at that
18 particular time. I will allow that question.

19 BY MR. LUMUMBA:

20 Q. You were a drug user then; right?

21 BY MR. EVANS: Your Honor, that is not
22 relevant.

23 BY THE COURT: That is not; that is sustained.
24 I have already sustained that objection once.

25 BY MR. LUMUMBA: Okay, well--

26 BY THE COURT: --Don't ask that again.

27 BY MR. LUMUMBA:

28 Q. Well, when was the last time you had used drugs
29 before that conversation with him?

1 BY MR. EVANS: Your Honor--

2 BY THE COURT: --Sustained.

3 BY MR. EVANS: --that is not relevant.

4 BY THE COURT: It's not relevant.

5 BY MR. LUMUMBA: I don't know why they are
6 trying to hide this, Judge.

7 BY THE COURT: Well, it's because I have said
8 it's not relevant, Mr. Lumumba. Now ask your
9 question. Move on.

10 BY MR. LUMUMBA:

11 Q. Were you on drugs then?

12 BY MR. EVANS: Your Honor, he is going to have
13 to ask his question the way the Court--

14 BY MR. LUMUMBA: --I thought you said I could ask
15 that--

16 BY MR. EVANS: --May I finish?

17 BY THE COURT: He has asked that question. I
18 don't believe he has gotten an answer for that. He
19 can ask that question, and then that can be
20 answered.

21 BY MR. LUMUMBA:

22 Q. Were you on drugs?

23 BY THE COURT: No, that is not the question you
24 asked. You said then.

25 BY MR. LUMUMBA: Oh, I'm sorry.

26 BY MR. EVANS: Are we talking about that day?

27 BY THE COURT: I-- there again, when there is no
28 jury sitting in that box, that's what I take it to be
29 he is talking about. He can answer that question.

1 Answer the question, Mr. Hawkins.

2 BY MR. LUMUMBA: Judge. Judge, you--

3 BY THE COURT: --Do you want him to answer your
4 question?

5 BY MR. LUMUMBA: Yes, I do--

6 BY THE COURT: --Okay, answer the question.

7 BY MR. LUMUMBA: Hold it, hold it, hold it, hold
8 it, just one second, one second, one second. I just
9 want a little clarity here. Now I asked him to be
10 clear about time and place. You said it wasn't
11 necessary. Why is it necessary now?

12 BY THE COURT: I just ruled that it wasn't, that
13 he could answer the question.

14 BY MR. LUMUMBA: Okay.

15 BY THE COURT: I can't do any more than that.

16 BY MR. LUMUMBA:

17 Q. Okay, were you on drugs then?

18 A. Was I on-- at what time? While I was in jail, before
19 or after? What you saying?

20 Q. Was there some time when you was on drugs?

21 BY MR. EVANS: Your Honor--

22 BY THE COURT: I sustained that objection. You
23 cannot go into his drug history. The question is
24 only relevant if he was on drugs at the time he gave
25 the statement.

26 BY MR. LUMUMBA:

27 Q. Were you on drugs when you gave the statement?

28 A. No.

29 Q. Were you on drugs before you gave the statement?

1 BY MR. EVANS: That is not relevant, Your
2 Honor. I think the Court has ruled on this at least
3 six times.

4 BY MR. LUMUMBA: Okay, well, let me-- now he has
5 given an answer. So now I have a right to challenge
6 his answer. I have a right to challenge it to see
7 exactly what he is talking about when he says he was
8 not--

9 BY THE COURT: --You also have the obligation to
10 put a predicate on your question to identify the time
11 you are talking about.

12 BY MR. LUMUMBA: Okay, let me do that. Let me
13 do that.

14 BY MR. LUMUMBA:

15 Q. Okay, now you said you weren't on drugs then. Are
16 you saying that you weren't on drugs at that moment? Huh? Is
17 that what you're saying?

18 A. No, I wasn't.

19 Q. Okay, and when was the last moment that you were on
20 drugs before then?

21 BY MR. EVANS: Object on relevance, Your Honor.

22 BY MR. LUMUMBA: No, no, no, Judge, because see,
23 he is not a doctor. I am entitled to inquire to see
24 when the last time--

25 BY MR. HORAN: --It's whether or not he--

26 BY THE COURT: --You have to set a time limit
27 within, that you can ask that about. It makes no
28 difference to this Court whether, if he was on drugs
29 five days before. You are going to have to ask your

1 question in the correct manner.

2 BY MR. LUMUMBA:

3 Q. How long were you in the jail before you made the
4 statement?

5 A. Uh, like three weeks.

6 Q. And did you use some drugs in jail?

7 A. No.

8 Q. Did you use drugs before you went to jail?

9 BY MR. EVANS: I object, Your Honor.

10 BY THE COURT: Sustained.

11 BY MR. EVANS: I don't know how many times I'm
12 going to have to object to it, but I will--

13 BY THE COURT: --You cannot pursue this line of
14 questioning.

15 BY MR. LUMUMBA:

16 Q. When-- did you, did you go use some drugs once you
17 made the statement?

18 BY MR. EVANS: Your Honor, this is the most
19 ridiculous show--

20 BY THE COURT: --Sustained--

21 BY MR. EVANS: --I have ever seen in a
22 courtroom.

23 BY THE COURT: Mr. Evans. I understand your
24 objection.

25 BY MR. EVANS: --and I object.

26 BY THE COURT: Okay. It's sustained.

27 BY MR. LUMUMBA:

28 Q. Okay. So when you came to court and testified the
29 last time, were you on drugs then?

1 BY MR. EVANS: Your Honor, I don't know if this
2 is a game with Mr. Lumumba or not--

3 BY MR. LUMUMBA: --No, it's not a game.

4 BY MR. EVANS: I object again for the fifteenth
5 or twentieth time. Also, I object on this as that
6 the motion we are here on here now is whether they
7 were put in the jail for a specific purpose and
8 nothing about the trial.

9 BY MR. LUMUMBA: Well, he has asked--

10 BY THE COURT: --Well, I think the motion is
11 broad enough to include whether or not they were,
12 that there was governmental misconduct that got them
13 to testify, and certainly, what they testified to is
14 relevant to this hearing just as much as the
15 statement is. It's not limited to the jail. And so
16 whether or not he was on drugs at the time that he
17 testified is relevant. You can ask that question.

18 BY MR. LUMUMBA: Okay.

19 BY MR. LUMUMBA:

20 Q. At the time that you testified-- do you remember when
21 you testified?

22 A. Yeah.

23 Q. Huh?

24 A. Uh, I told--

25 Q. Now you are not on drugs right now, are you?

26 A. No. I'm tired.

27 Q. Okay. Okay. Well, let me see. At the time that you
28 testified, were you on drugs?

29 A. No.

1 Q. And when you say-- had you used drugs within five
2 days before you testified?

3 A. No. No.

4 Q. Six days?

5 A. No.

6 BY MR. EVANS: Your Honor, I object.

7 BY THE COURT: Sustained.

8 BY MR. EVANS: This is ridiculous.

9 BY THE COURT: That is too far afield.

10 BY MR. LUMUMBA:

11 Q. So when you testified in court, your mind was totally
12 clear; right?

13 A. Yes.

14 Q. And your mind is totally clear today?

15 A. Yes.

16 Q. And you are telling us today that you never sent the
17 Sheriff a letter; right?

18 A. No.

19 Q. And just as sure as that is the truth, what you
20 testified in court about Flowers telling you something is the
21 truth. Both of those are true; right?

22 A. Yes.

23 Q. The same way?

24 A. Yeah.

25 Q. You are just as certain of both of them?

26 A. (No immediate response).

27 Q. You are just as sure of both of them; right?

28 A. Yes.

29 (Pause while Defense Counsel confer.)

1 Q. Well, let me see. What were you in jail for?

2 A. Burglary.

3 Q. Did you get convicted of the burglary?

4 A. Yes--

5 BY MR. EVANS: --Your Honor, that is not
6 relevant.

7 BY MR. LUMUMBA: --It's in--

8 BY MR. EVANS: --unless he can show some
9 relevance. This is--

10 BY MR. LUMUMBA: Can I speak on it?

11 BY THE COURT: Yes, sir.

12 BY MR. LUMUMBA: It's relevant because it shows
13 whether or not there was some kind of favorable
14 treatment.

15 BY MR. EVANS: Your Honor, the reason it is not
16 relevant is this witness has already testified that
17 he had already been to court on the charge he was in
18 court, had already been placed on probation when he
19 asked to speak to Sheriff Banks and told him what
20 Curtis Flowers told him, so it cannot be relevant
21 unless he can lay some proper predicate.

22 BY THE COURT: That is true. Sustained.

23 BY MR. LUMUMBA: Wait a minute, Judge. That may
24 be his story, but I don't have to accept his story.

25 BY THE COURT: No, sir. But you have not laid
26 the predicate. The objection is sustained.

27 BY MR. LUMUMBA: I can lay the predicate through
28 another witness. So I think that I am entitled
29 through this witness to get things which corroborate

1 what the other witness said.

2 **BY THE COURT:** Okay, I have already ruled.

3 BY MR. LUMUMBA:

4 Q. How long did you stay in jail?

5 A. The last time about three weeks.

6 Q. And how is it that you got out?

7 A. Out of jail the first time?

8 Q. No, you said the last time three weeks. How many
9 times have you been in jail?

10 A. No, I was out--

11 BY MR. EVANS: --Your Honor, he is going to have
12 to direct this to some time frame.

13 **BY THE COURT:** You are going to have to just
14 show something that is going to show prosecution
15 misconduct for it to be relevant, so you are going to
16 have to at least ask questions toward that point.

17 BY MR. LUMUMBA: Prosecutor misconduct is
18 letting somebody--

19 **BY THE COURT:** --I'm sorry; governmental
20 misconduct; excuse me--

21 BY MR. LUMUMBA: --out of jail earlier.
22 Governmental misconduct is letting somebody out of
23 jail early on probation because they go and do a job
24 for you and tell a lie.

25 **BY THE COURT:** That's right. You need to-- if
26 that's what you, where you are going with this, then
27 you need to ask those questions.

28 BY MR. LUMUMBA: Okay, well, I'm asking--

29 **BY THE COURT:** --I don't care about his general

1 life history.

2 BY MR. LUMUMBA: Well, I am asking those
3 questions.

4 BY MR. LUMUMBA:

5 Q. Did you get out of jail on a guilty plea? Did you
6 get out of jail on a guilty plea?

7 A. Yeah, I plead guilty.

8 Q. And you got out of jail; right?

9 A. I got placed on probation.

10 Q. Which means you were out of jail. Is that what that
11 means?

12 A. Yeah, well, if you call it that.

13 Q. And this is after this so-called conversation with
14 Mr. Flowers; right?

15 A. Yeah. Well, could I tell you this? I got, when I
16 was charged, the other guy who was with me went to court two
17 months before I did. They put him on house arrest. By
18 neither, by either one of us being convicted of a crime, they
19 put me on house arrest too. That's how I got that.

20 Q. Is that how you got out?

21 A. Probation.

22 Q. Are you sure about that?

23 A. I am positive.

24 Q. You are just as sure about that as the fact that you
25 never sent the Sheriff a note; right?

26 A. Yes.

27 Q. Huh?

28 A. Yes.

29 Q. Now were you under oath when you testified back in

1 the hearing when you testified up in Tupelo?

2 A. Yes.

3 Q. Is your name Maurice Hawkins?

4 A. Yeah.

5 Q. Let me see if I can share this with you right here.

6 I am referring to page 486 of the transcript of your

7 testimony. Do you see somebody's name at the top of that page?

8 A. Yeah.

9 Q. Whose name is that?

10 A. Mine.

11 Q. Say it for me.

12 A. Maurice Hawkins.

13 Q. And do you see this question here where it says,

14 "Where did this happen, Mr. Hawkins?"

15 A. No, I don't see.

16 Q. You don't see that question right there? It says

17 cross-examination--

18 A. --yeah--

19 Q. --by Billy Gilmore. Is that what it says?

20 A. Yeah.

21 Q. And it says, "Where did this happen, Mr. Hawkins?"

22 Is that what it says?

23 A. (Witness nods his head.)

24 Q. Huh?

25 A. Yeah.

26 Q. It says, "In Leflore County Jail." That's what it

27 says?

28 A. Yes.

29 Q. I can't hear you.

1 A. Yes.

2 Q. And "When did you make this statement?" "It was, it
3 was around the first of July." Is that what it says?

4 A. Yes.

5 Q. "Okay. And who did you tell?" Answer -- whose name
6 is at the top of that page?

7 A. That's my name.

8 Q. And it says Answer here; right?

9 A. Yeah.

10 Q. "I wrote a letter to Sheriff Ricky Banks." Is that
11 what it says?

12 A. Yeah, that's what it says.

13 Q. And that's you, Maurice Hawkins; right?

14 A. My name is on there.

15 Q. And that says, "I wrote a letter to Ricky Banks,"
16 right?

17 A. That's what that paper said.

18 Q. Now you were under oath when you testified; right?

19 A. Yeah, I was.

20 Q. You spoke--

21 BY MR. EVANS: --Your Honor, trying to impeach
22 him on something that he said at trial is not
23 relevant to what we are here on today. We are here
24 on his motion alleging certain facts, and this
25 witness has not stated any of those facts.

26 BY THE COURT: But he did state that he didn't
27 write a letter, and that was back when all this went
28 on at the jail. I'm going to allow it.

29 BY MR. LUMUMBA:

1 Q. Then back here on page 489, that is still your name
2 up there; right?

3 A. Yes.

4 Q. And then it says, "You sent him a note saying that's"
5 why-- "that's what Mr. Flowers told you?" Do you see that
6 question? Right here next to "Q." "You sent him a note saying
7 that's what Mr. Flowers told you?" Do you see that? Do you
8 see that question mark?

9 A. I see that.

10 Q. And then it says, "I sent him a note, told him I
11 needed to talk to him about Curtis Flowers." That's what it
12 says; right?

13 A. I sent Ms. Childs a note.

14 Q. It says, "I sent him a note." Is Ms. Childs a him?

15 A. Well, that's what that says.

16 Q. Now you had a conversation with Mr. Veal up in
17 Tupelo; right?

18 A. No, I did not.

19 Q. Oh, you never talked to Mr. Veal in Tupelo?

20 A. No.

21 Q. Where did you stay in Tupelo?

22 A. It was in the room, but he was always on the phone,
23 and I was laying there asleep--

24 Q. --Now wait a minute. Now let's take it one step at a
25 time. You were in a room?

26 A. Yeah.

27 Q. This is where you slept at?

28 A. Yeah.

29 Q. Was he in the same room?

1 A. Yes.

2 Q. He slept there too?

3 A. I don't know what he was doing. I was sleep.

4 Q. But he was, I mean, you know, that was his room for
5 that time; is that right?

6 A. Yes.

7 Q. And how long were you there?

8 A. A night.

9 Q. And how long was he there?

10 A. I don't know.

11 Q. Well, how long were you in the room together?

12 A. A night.

13 Q. A night. And you didn't talk to him the whole night?

14 A. He was on the phone.

15 Q. Oh, I see. It must be a heck of a phone bill from
16 that room then; right?

17 A. Sure is; I guess.

18 Q. Okay, by the way, who paid for the room?

19 A. I don't know.

20 Q. Did you pay for it?

21 A. No.

22 Q. Well, he never said nothing to you while you were in
23 there; right?

24 A. No.

25 Q. And you never said nothing to him?

26 A. (Witness shakes his head.)

27 Q. I can't hear you.

28 A. No.

29 Q. You don't remember telling him that you didn't really

1 want to testify against this innocent man? You don't remember
2 telling him that?

3 A. No.

4 Q. You don't remember telling him that the Sheriff had
5 sent you in there to get a statement from this man?

6 A. No, he did not.

7 Q. Okay, well, let me ask you this. At the time that
8 you say you talked to Mr. Flowers, were there other people in
9 the same cell?

10 A. Other people?

11 Q. Yes, human beings?

12 A. Yes.

13 Q. It was you and him; right?

14 A. Yeah.

15 Q. How many other people were in the cell?

16 BY MR. EVANS: Your Honor, this is not--

17 BY THE WITNESS:

18 A. --I can't recall.

19 BY MR. EVANS: --not relevant on the motion, and
20 I object.

21 BY THE COURT: Overruled.

22 BY MR. LUMUMBA:

23 Q. How many people were in the cell?

24 A. I can't recall.

25 Q. Was it more than one?

26 A. Yes.

27 Q. It was like at least three or four; right?

28 A. I don't exactly remember how many.

29 Q. What were they doing?

1 A. Asleep, I guess.

2 Q. Oh, it just so happens that everybody else was
3 asleep? So that nobody else would hear it; right? Just you?

4 A. I don't know what they heard.

5 Q. I see. Have you ever talked to any of the people
6 that is related to any of the people who tragically died in
7 this incident?

8 A. No.

9 Q. Never said a word to them?

10 A. No.

11 Q. I see. Have you ever heard there is a reward out?

12 A. Yeah, I heard it.

13 Q. You heard that, huh?

14 A. Yeah, I heard it.

15 Q. Well, you don't, you don't, you don't, you don't need
16 money for anything, do you?

17 A. No.

18 Q. You never need money for drugs?

19 A. No.

20 Q. Never needed money for drugs?

21 BY MR. EVANS: Your Honor--

22 BY THE WITNESS:

23 A. -- No, I didn't need--

24 BY MR. EVANS: --that is not relevant.

25 BY THE COURT: Sustained.

26 BY MR. LUMUMBA: It is certainly relevant,
27 Judge.

28 BY THE COURT: No, sir. I have ruled it's not.
29 Sustained.

1 BY MR. LUMUMBA: Well, that don't mean it's not
2 relevant. It just means your ruling--

3 BY THE COURT: --But that means that's what I
4 have ruled, and let's move on.

5 BY MR. LUMUMBA: All right, okay. Well, it
6 wouldn't be the first time, Judge.

7 BY THE COURT: That is true, Mr. Lumumba. Have
8 you got any further questions?

9 BY MR. LUMUMBA: I will let you know.

10 BY THE COURT: Thank you.

11 (Defense Counsel confer briefly.)

12 BY MR. LUMUMBA:

13 Q. So what lady-- who is Ms. Childs?

14 A. A District Attorney.

15 Q. Pardon?

16 A. A District Attorney.

17 Q. Ms. Childs is a District Attorney?

18 A. Yeah.

19 Q. Okay, and so you sent her a letter?

20 A. Yeah.

21 Q. I see. And when did you send her that letter?

22 A. Uh, it was that morning. I didn't know I was going
23 to court. My date was scheduled to go to court July the 7th,
24 but they took me that, uh, July the 3rd.

25 Q. And what did you say--

26 A. --I didn't even know--

27 Q. --in that letter? What did you say in the letter to
28 Ms. Childs?

29 A. Just telling her that I needed to talk to her about

1 something.

2 Q. Did you talk to her?

3 A. After court. I didn't get a chance to talk to her.
4 I talked to Mr. Banks.

5 Q. Oh, you talked to Mr. Banks. But you did send Ms.
6 Childs a letter?

7 A. Yeah.

8 Q. And that is Ms. Childs that works for-- do they work
9 in the same office with this gentleman, these gentlemen here?

10 A. No.

11 Q. Where does she work?

12 A. Leflore County.

13 Q. Was she, was she on your case?

14 A. She the District Attorney, yeah.

15 Q. She is the District Attorney?

16 A. Yeah.

17 Q. You are sure about that?

18 A. (Witness nods his head.)

19 Q. Huh?

20 A. Yeah.

21 Q. Okay. Do you know her first name? Hum?

22 A. Joyce, I think.

23 Q. Oh, let, let me see. Let me see if I can figure this
24 one out. Okay, now you sent her the note before you went to
25 court; right?

26 A. Yes.

27 Q. And the note was supposed to be about you wanted to
28 talk to her?

29 A. Exactly.

1 Q. And you knew that this case that Curtis Flowers was
2 charged with occurred in Winona; right?

3 A. Yeah, I knew what he was charged with.

4 Q. And you knew it happened in Winona; right?

5 A. Winona.

6 Q. Is that right?

7 A. Yeah.

8 Q. Did you know that?

9 A. Yes.

10 Q. You knew it at the time?

11 A. Yeah.

12 Q. And she is the DA over there in Leflore County;
13 right?

14 A. Yes.

15 Q. The place where you had to go to court?

16 A. Yes.

17 Q. The place where your case was?

18 A. Yeah.

19 Q. Huh?

20 A. Yes.

21 Q. She is not the DA over here where the case happened;
22 right?

23 A. No.

24 Q. What?

25 A. No.

26 Q. You didn't send a note to this DA telling him you had
27 some information; right?

28 A. No.

29 Q. You sent the note to the DA that had some

1 responsibility over your case?

2 A. Well, on my case I already knew I was going to get
3 house arrest.

4 Q. I understand, but I know, I know you told us that. I
5 know you told us that. I know you told us that. But what I'm
6 going to ask you is that it just so happens that you sent the
7 letter or the note before you were placed on house arrest;
8 right?

9 A. Yeah, it-- yeah.

10 Q. And it just so happens you sent it to the DA that was
11 in charge of your case and not the DA in charge of this case;
12 right?

13 A. Well, I sent it to her because she is the only one
14 who gets letters from people in jail quicker than anybody.

15 Q. Oh. I see. Banks is at the jail, isn't he?

16 A. Yes, sir. Well, sometimes I guess.

17 Q. He is at the jail more than she is at the jail, isn't
18 he?

19 A. I don't know.

20 Q. Well, you didn't think that-- I mean how long do you
21 think it takes a letter to get from, uh, where is that?
22 Leflore? From what city were you in? You were down in
23 Greenwood; is that right?

24 A. Yeah.

25 Q. How long do you think it would take a letter to get
26 from Greenwood over here to where this man's office is?

27 A. I don't know. I'm not a mailman.

28 Q. Okay, you think it takes two or three days?

29 A. I don't know.

1 Q. I see. But that was a concern of yours that it might
2 take too long?

3 A. I don't know.

4 Q. Well, you wasn't in no hurry, were you?

5 A. For what?

6 Q. I was wondering since your sentence was about to come
7 up, you wasn't in no hurry, were you?

8 A. I was, I already knew what my sentence going to be.

9 Q. So you wasn't in no hurry; right?

10 A. No.

11 Q. So you could have sent the letter, and even if it
12 took two months, it would be all right; right?

13 A. Yeah, could.

14 Q. But you just decided to send it to the DA that had
15 your case because it could get there right away, right before
16 you were going to be sentenced. That was just all a
17 coincidence; right?

18 A. No.

19 Q. Explain it to me.

20 **BY THE COURT:** Of course, the issue is not--

21 **BY THE WITNESS:**

22 A. --There is nothing--

23 **BY THE COURT:** --whether he got a deal. Wait a
24 minute, Mr. Hawkins. It's not whether he got a
25 deal. It's whether somebody did something that was
26 wrong in getting him that deal, so let's get back on
27 the issue.

28 **BY MR. LUMUMBA:** Well, there is two parts to
29 every issue, Judge. One is the deal; the second part

1 is why you get the deal. Witnesses like this fellow
2 lie sometimes.

3 **BY THE COURT:** Well, then why don't you ask him
4 those questions?

5 **BY MR. LUMUMBA:** Witnesses, you know, you know,
6 witnesses lie sometimes. You know that, Judge?

7 **BY THE COURT:** I have heard that.

8 **BY MR. LUMUMBA:** Yeah, right. In fact, one of
9 them just came in here and told you that he lied.

10 **BY THE COURT:** Okay, you want to ask him
11 questions, stay on point and ask him questions, or we
12 are going to move on.

13 **BY MR. LUMUMBA:**

14 Q. Well, the point is that you got a deal; right?

15 A. No.

16 Q. You didn't get no deal?

17 A. No.

18 Q. Oh. Oh, you just, you just happened to send a letter
19 to Ms. Childs, the person who was the DA in your district;
20 right?

21 A. Yes.

22 Q. Okay, I see. All right. Just like you never said
23 you sent the letter to the Sheriff; right?

24 A. Exactly.

25 Q. Who did you give the letter to that was supposed to
26 go to Ms. Childs?

27 A. Uh, I can't remember. It was always the jailer.

28 Q. You don't remember who the jailer was?

29 A. No, I don't remember who the jailer was. We slide

1 letters under the door. They will get them, whoever the
2 jailer--

3 Q. Oh, I see. You don't remember who the jailer was;
4 right?

5 A. No. How could you see with the flap closed? You
6 just stick the envelope up under it.

7 Q. You don't remember who was in the jail with you when
8 you had the discussion with Mr. Flowers; right?

9 A. Uh. I remember Steve, Steven Davis because we were
10 from Itta Bena.

11 Q. Oh, you can remember Steve Davis being there?

12 A. At that time, yeah.

13 Q. Okay, where does he live at now?

14 A. Uh, he is locked up.

15 Q. Where is locked up at?

16 A. I don't know.

17 (Pause while Mr. Lumumba confers with his
18 client.)

19 Q. Have you talked to Steve about this?

20 A. No.

21 Q. You don't remember making a statement to Steve about
22 this was all made up so you could try to get a little money in
23 your pocket--

24 A. --No. I don't need the money.

25 Q. Oh, you don't need the money?

26 A. No, if I did, I wouldn't be working.

27 Q. Oh. So thirty thousand dollars couldn't help you?

28 A. No.

29 Q. Well, if you had a crack habit, it might help you;

1 right?

2 BY MR. EVANS: Your Honor--

3 BY THE WITNESS: --No.--

4 BY THE COURT: --Sustained.

5 BY MR. LUMUMBA:

6 Q. Why are you smiling? What is so funny?

7 BY THE COURT: Ask him a relevant question.

8 BY MR. LUMUMBA:

9 Q. It's kind of funny that the Judge and the prosecutor
10 is trying to stop you from talking about your crack habit--

11 BY MR. EVANS: --Your Honor--

12 BY THE COURT: --No, sir. That is just the
13 ruling. It's not relevant, and I have ruled on it.
14 Mr. Lumumba, you know that's the way the Court
15 works--

16 BY MR. LUMUMBA:

17 Q. --Why are you smiling? What are you smiling about?

18 BY MR. EVANS: Your Honor, that is not
19 relevant.

20 BY THE COURT: --Sustained--

21 BY MR. EVANS: --I think everybody in the
22 courtroom was smiling because of what was going on--

23 BY THE COURT: That objection is sustained.

24 BY MR. LUMUMBA: No, no, no. Part of what is
25 relevant to any determination by a objective finder
26 of fact is the demeanor of the witness.

27 BY MR. HORAN: I want to apologize to this Court
28 for this man's actions.

29 BY MR. LUMUMBA: Yes, sir. You don't have to

1 talk to me.

2 **BY THE COURT:** I have sustained the objection.

3 BY MR. LUMUMBA: Okay. So, so I can't ask him
4 why he is smiling; is that right?

5 **BY THE COURT:** That's right.

6 BY MR. LUMUMBA: Okay. Okay.

7 **BY THE COURT:** Any further questions of this
8 witness?

9 BY MR. LUMUMBA: I have no further questions of
10 this witness.

11 **BY THE COURT:** All right.

12 BY MR. LUMUMBA: At this time.

13 **BY THE COURT:** Mr. Evans.

14 BY MR. EVANS: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. EVANS:

16 Q. Mr. Hawkins, is it true that you were in the same
17 cell with Curtis Flowers?

18 A. Yes.

19 Q. And that Curtis Flowers admitted to you that he had
20 killed the people at Tardy Furniture here--

21 BY MR. LUMUMBA: --Objection.

22 BY MR. EVANS: Wait until the Court rules.

23 **BY THE COURT:** What is the objection?

24 BY MR. LUMUMBA: The objection is it's
25 irrelevant to the issue at hand, and I didn't ask
26 that.

27 **BY THE COURT:** Overruled.

28 BY MR. EVANS:

29 Q. You may answer the question. Did Curtis Flowers

1 admit to you that he killed the people in Tardy Furniture in
2 Winona?

3 A. Yes.

4 Q. And after he admitted that to you, did you, in fact,
5 go to court on your case?

6 A. Yes. I went to court.

7 Q. And I believe, to make sure the record is clear, you
8 had already been offered the same deal that the co-defendant
9 got, house arrest?

10 A. Yes.

11 Q. You pled guilty and were sentenced to house arrest;
12 is that correct?

13 A. Yes.

14 Q. And after you had pled guilty and were sentenced, you
15 asked to speak to the Sheriff about this, Sheriff Ricky Banks?

16 A. Yes.

17 Q. You told Sheriff Ricky Banks that Curtis Flowers had
18 admitted to you that he had killed the people at Tardy
19 Furniture; is that right?

20 A. Yes.

21 Q. And based upon that, then an investigator from my
22 office came and took a statement from you about what you knew;
23 is that right?

24 A. Yes.

25 Q. Is all that true?

26 A. Yes.

27 BY MR. EVANS: No further questions.

28 BY THE COURT: Redirect?

29

1 REDIRECT EXAMINATION BY MR. LUMUMBA:

2 Q. Did you subsequently speak to Fred Veal and tell him
3 all that what you just said was a lie?

4 A. No.

5 Q. And so you never told him that in Tupelo, that Curtis
6 Flowers is an innocent man?

7 A. No.

8 Q. And you never told Steve Davis that?

9 A. No.

10 BY MR. FREELON: Wait; just one minute, Your
11 Honor.

12 (Defense Counsel confer briefly.)

13 BY MR. LUMUMBA:

14 Q. And you never told Cur-- you never told Veal that you
15 had been sent in there by the Sheriff to try to get a
16 statement?

17 A. No.

18 Q. Let me ask you this. You were talking about what you
19 did, and you went in there, and you said the Sheriff didn't
20 send you; right?

21 A. (Witness shakes his head.)

22 Q. Did you know anything about the facts in the case
23 before you talked to Mr.--

24 BY MR. EVANS: --Your Honor, that is not
25 relevant to what we are here on today.

26 BY MR. LUMUMBA: Yes, yes--now let--

27 BY MR. EVANS: --And I did not go into that in
28 my statement.

29 BY MR. LUMUMBA: Judge, Judge, now how--

1 BY MR. EVANS: --This is redirect.

2 BY MR. LUMUMBA: How can--

3 BY THE COURT: --You can't talk when he talks.

4 BY MR. EVANS: The rules are very clear on
5 redirect what can be gone into, and it's not relevant
6 to the motion anyway.

7 BY THE COURT: Let me-- ask the question, and
8 then I will rule on the objection.

9 BY MR. LUMUMBA: Okay, well, let me make my
10 argument. Can I make my argument?

11 BY THE COURT: No, you can ask the question
12 because I don't know what you asked.

13 BY MR. LUMUMBA:

14 Q. My question is you have just told the gentleman who
15 was up here a few minutes ago that nobody sent you in there;
16 right? Is that true?

17 A. Yeah.

18 Q. And that the Sheriff-- you didn't even talk to the
19 Sheriff or anybody before you went in there; right?

20 A. Before I went to court?

21 Q. No, before you went in there where Mr. Flowers was.
22 Before you were housed with Mr. Flowers?

23 A. Did I talk to the Sheriff?

24 Q. Yeah.

25 A. No, I didn't.

26 Q. And nobody told you to go in there and get any
27 information; right?

28 A. No.

29 Q. And nobody told you anything about the case; right?

1 A. No.

2 Q. Is that right?

3 A. That's right. I didn't even know Mr. Flowers until
4 after I got in the cell.

5 Q. And you didn't know nothing about the facts of the
6 case?

7 A. No.

8 Q. You didn't know anything about what had happened over
9 there?

10 A. No.

11 Q. I'm sorry?

12 A. No.

13 Q. You didn't know anything about what was taken and
14 what wasn't taken?

15 A. Well, no, I didn't know then.

16 Q. You didn't know any of that?

17 A. (Witness shakes his head.)

18 Q. I'm sorry?

19 A. No. Well, I heard some money in a safe or something.

20 Q. And who-- where did you hear that from?

21 A. I just heard it. It was in the papers.

22 Q. Oh, it was in the papers?

23 A. I talked to some people about it before.

24 Q. Oh, okay. Now you done heard-- now you done talked
25 to some people; right?

26 A. Yeah. It was in the news.

27 BY MR. EVANS: Your Honor, this is what I'm
28 objecting to. It's not relevant what he knew at that
29 point. What is relevant is what the Motion is on.

1 **BY THE COURT:** That is true, and it's improper
2 redirect. Sustained.

3 BY MR. LUMUMBA: Can I ask you a question? How
4 was it relevant when he was asking the questions and
5 not relevant now?

6 **BY THE COURT:** You can ask it, but I'm not going
7 to answer it. Let's move on.

8 BY MR. LUMUMBA: All right. Have you got any
9 others?

10 (Mr. Freelon shakes his head.)

11 BY MR. LUMUMBA: We don't have any other
12 questions of this witness right now.

13 **BY THE COURT:** Okay, you may return to the
14 witness room. Are you ready? Need a break?

15 BY THE COURT REPORTER: Yes, sir.

16 **BY THE COURT:** We are going to take about 10
17 minutes.

18 (FOLLOWING A RECESS ON MARCH 3, 1998, THE
19 PRETRIAL MOTION HEARING CONTINUED IN OPEN COURT WITH
20 THE COURT, ALL COUNSEL AND THE DEFENDANT PRESENT AS
21 FOLLOWS:)

22 **BY THE COURT:** Who will you have next?

23 BY MR. LUMUMBA: At this time I would call the
24 Sheriff, Sheriff Banks.

25 **FREDERICK L. "RICKY" BANKS,**
26 a white male called to testify as a witness by the Defendant on
27 his Motion to Suppress, having been previously sworn, testified
28 as follows, to-wit:

29 **BY THE COURT:** State your name for the record,

1 please, sir.

2 BY THE WITNESS: Frederick L. "Ricky" Banks.

3 DIRECT EXAMINATION BY MR. LUMUMBA:

4 Q. Mr. Banks, were you ever told that you would have to
5 appear here to testify today or that might be a possibility?

6 A. Yes, sir.

7 Q. And who told you that?

8 A. The lady in the District Attorney's Office.

9 Q. The lady at the District Attorney's Office. Do you
10 know-- does she have a name?

11 A. Margie.

12 Q. And how long ago did you find out?

13 A. Yesterday.

14 Q. And did you review any notes or anything in order to
15 prepare yourself to testify here today?

16 A. Well, I brought a file with me that concerned this
17 case to testify.

18 Q. What is that file about?

19 A. It's about Freddie Veal and Maurice Hawkins.

20 Q. Okay, can I see it there, please?

21 A. Sure.

22 (File handed to Mr. Lumumba; long pause.)

23 BY MR. EVANS: Your Honor, if we are going to
24 sit here and him read the entire Sheriff's file, I
25 would ask that we at least take a break so everybody
26 doesn't have to sit in the courtroom while he takes
27 time to read through a file.

28 BY MR. LUMUMBA: That would be fine, Judge. It
29 seems to me it is something I should have gotten in

1 discovery anyway, but since I didn't, I would like to
2 have a break long enough to read it.

3 **BY THE COURT:** How long will it take you to read
4 it?

5 BY MR. LUMUMBA: Probably about 5 or 10 minutes
6 at the most.

7 **BY THE COURT:** Okay, we will take a break.

8 BY MR. EVANS: I would also ask that the
9 Sheriff's file remain in the courtroom.

10 BY MR. LUMUMBA: I would ask that I get copies
11 of it that I should have had--

12 BY MR. EVANS: --I don't know what is there, so
13 I don't know what's there. I just don't want it to
14 leave the courtroom.

15 **BY THE COURT:** Well, you can examine it in here.

16 BY MR. LUMUMBA: Now Judge, let me-- as you
17 recall, the last time that we met we asked the
18 question of whether or not any notes went to the
19 Sheriff or whether the Sheriff had any information on
20 this case. They claim they went and asked the
21 Sheriff, and he came back and said no. That's what
22 they claim.

23 BY MR. HORAN: He came in the courtroom.

24 BY MR. LUMUMBA: So what I'm trying to figure
25 out is how does the statements in his possession come
26 up when he didn't have them at the last time?

27 **BY THE COURT:** Well, I don't know because I
28 don't know that they have. That is just your
29 statement to that effect. Read the file--

1 BY MR. LUMUMBA: --Well, you don't-- now you do
2 recall us inquiring about--

3 BY THE COURT: I recall all that. You read the
4 file. Then we will talk--

5 BY MR. LUMUMBA: --Now I'm sorry--

6 BY THE COURT: --come back in ten minutes--

7 BY MR. LUMUMBA: You recall what now? I didn't
8 hear what you said. I'm sorry; I didn't hear what
9 you said.

10 BY THE COURT: I said I recall what I did. Take
11 10 minutes.

12 (FOLLOWING ANOTHER RECESS ON MARCH 3, 1998,
13 MOTION PROCEEDINGS CONTINUED IN OPEN COURT WITH THE
14 COURT, ALL COUNSEL, AND THE DEFENDANT PRESENT AND
15 WITH THE WITNESS, SHERIFF RICKY BANKS, BACK ON THE
16 WITNESS STAND FOR THE FOLLOWING:)

17 BY THE COURT: All right, sir.

18 BY MR. LUMUMBA: Judge, the comment about
19 persons in the courtroom not making any noise, I
20 assume that goes to everybody in the courtroom
21 because I noticed that people on that side of the
22 room are kind of-- where, where the black folks seem
23 to be sitting were chastised when somebody clapped.
24 However, several times this middle portion of the
25 courtroom has reacted to different things - laughed
26 or made noise or some kind of way - I never heard the
27 Court say anything about it. So I am just trying
28 to-- and it seems to be majority white people sitting
29 here. I just want to make sure that the rule is

1 evenly applied, and the Court may not have even
2 noticed it, but I noticed it. So I thought I would
3 bring it to your attention.

4 **BY THE COURT:** Okay, there have been numerous
5 expressions one way or another made by numerous
6 persons in the courtroom. That is not what concerned
7 the Court. It was where the clapping was disruptive
8 to the Court. I don't want the clapping. I don't
9 expect any displays of emotion from either side that
10 would be disruptive to the Court, and I'm not going
11 to allow that by anybody in the courtroom.

12 BY MR. LUMUMBA: Okay. Okay.

13 CONTINUED DIRECT EXAMINATION BY MR. LUMUMBA:

14 Q. Mr. Banks, you have a chance to talk to Mr. Freddie
15 Veal before?

16 A. Yes, sir.

17 Q. Did you have a chance to talk to him after we were at
18 the court the last-- do you remember when we were in court the
19 last time?

20 A. In Kosciusko?

21 Q. Yeah, on this case.

22 A. Yes, sir.

23 Q. And do you remember when I asked to talk to him?
24 They asked you to go get him so I could talk to him?

25 A. I don't remember it, but if you say so, okay.

26 Q. Well, I want you to try to remember. Remember when I
27 did go talk to him in a room?

28 A. I know you talked to him; yes, sir.

29 Q. Do you recall that you had brought him to court? You

1 recall that; right?

2 A. Yes, sir. He rode with me.

3 Q. Okay, did you have a chance to talk to him before I
4 had a chance to talk to him about me talking to him?

5 A. No, sir. I didn't talk to him about you talking to
6 him.

7 Q. All right, were you present or did you yourself ever
8 ask him if he could be wired up while he talked to me?

9 A. No, sir.

10 Q. That never happened?

11 A. No, sir.

12 Q. While you were around?

13 A. No, sir.

14 Q. Okay, let me ask you this here, Mr. Banks. Have you
15 got any letters or notes that was either sent to you by either
16 Mr. Veal or Mr. Hawkins?

17 A. No, sir.

18 Q. To your knowledge, did either one of them ever send
19 you any letters or notes?

20 A. No, sir.

21 Q. Do you have records that would show where Mr. Hawkins
22 was first housed when he came to your facility?

23 A. Yes, sir. I think I do.

24 Q. Did he ever change his housing from one place to the
25 next?

26 A. I don't know. I would have to look at the record. I
27 couldn't answer that without doing it.

28 Q. Do you have the records today?

29 A. No, sir.

1 Q. You can get them though; right?

2 A. If the Court wants me to, yes, sir.

3 Q. Yeah, if the Court wants you-- you wouldn't get them
4 if I wanted you to; right?

5 BY MR. EVANS: Your Honor, I object on
6 relevance.

7 BY THE COURT: --Well, you have got to wait--

8 BY MR. EVANS: --We are here on a specific
9 motion.

10 BY THE COURT: That is true, and there is a way
11 for you to get them here if you had wanted them here.

12 BY MR. LUMUMBA:

13 Q. Well, let me ask you this, and I just want to know.
14 You don't have any animosity toward me, do you?

15 BY MR. EVANS: Your Honor--

16 BY THE WITNESS:

17 A. --No, sir--

18 BY MR. EVANS: --I object. That is not proper--

19 BY THE WITNESS:

20 A. --I don't even know you.

21 Q. Okay, that's right. I don't know you either, do I?

22 A. No, sir.

23 Q. No, we just know-- you know what kind of work I do,
24 and I know what kind of work you do. That's all; right?

25 A. Yes, sir. Yes, sir.

26 Q. I know what you do, right. Okay, now let me see.

27 The-- what kind of records are they? Tell me about the

28 records that would tell us where these gentlemen or where

29 anybody in your place - particularly right now I'm focusing on

1 Mr. Hawkins - where they were located at one time and if they
2 changed. Like what do you call those?

3 A. From the time he is put in the county jail there, the
4 daily jail sheet that comes out, and it would have a list of
5 every prisoner and where he is located in that jail until he is
6 released.

7 Q. Okay. You were there, weren't you, when Mr.-- let me
8 see; Mr. Flowers came to your facility at some point; right?

9 A. Yes, sir.

10 Q. And do you know the Gilmores?

11 A. Yes, sir. I know the elderly Gilmore. I didn't know
12 the younger boy.

13 Q. Okay, you are aware of the fact that they represented
14 Mr. Flowers; right?

15 A. Yes, sir.

16 Q. You knew that they represented him while he was in
17 your jail; right?

18 A. Yes, sir.

19 Q. You never had occasion to advise Mr. Flowers of any
20 rights about giving a statement, did you?

21 A. No, sir--

22 BY MR. EVANS: --Your Honor, none of this is
23 relevant to what we are here on today. I object.

24 BY MR. LUMUMBA: Well, I think it is, Judge.

25 **BY THE COURT:** Okay, how?

26 BY MR. LUMUMBA: Well, I think that if we, I
27 recall my motion was to suppress a statement, and
28 whether you advise people of their rights is almost
29 the first, on the first page of law school when you

1 talk about suppressing statements. So I think that
2 is relevant.

3 **BY THE COURT:** Yes, sir. But the statement was
4 given to an individual and not to law enforcement.

5 **BY MR. LUMUMBA:** It doesn't make any difference.

6 **BY THE COURT:** Oh, yes, sir; it does. That is
7 on the first page too.

8 **BY MR. LUMUMBA:** No, no. That is not on, that
9 is not even in that book.

10 **BY THE COURT:** I sustain the objection.

11 **BY MR. LUMUMBA:** That is not in that book.

12 But-- so that is very good. That is very good. No
13 problem; no problem. No problem whatsoever.

14 **BY MR. LUMUMBA:**

15 Q. So you knew while they were there, while he was
16 there, he was being represented by the Gilmores, one or the
17 other; right?

18 A. When an attorney comes to the Leflore County Jail, he
19 has to sign in to what inmate he wants to talk to.

20 Q. Okay, all right.

21 A. So there is a record where they, when they came and
22 every time they came.

23 Q. And you are aware of it? You? No, I'm not asking
24 you about the records. I'm saying you are aware that they were
25 representing him while he was there; right?

26 A. The only reason I'm aware of it because Mr. Gilmore
27 came by and spoke to me. That's the only reason I am aware of
28 it.

29 Q. Well, whatever the reason is, you are aware of it?

1 A. Yes, sir.

2 Q. And you were aware of it while he was in your jail?

3 A. Yes, sir.

4 Q. And you were aware of it before you had any
5 communications from Mr. Hawkins; isn't that correct?

6 A. Aware of what?

7 Q. The fact that Gilmore was representing Mr. Flowers.

8 BY MR. EVANS: Your Honor, I object. I have
9 tried not to. I have tried to let this line go, but
10 whether or not he was aware of whether Mr. Gilmore
11 was representing him or not before Mr. Hawkins came
12 to him and told him what Curtis Flowers said is not
13 relevant.

14 BY THE COURT: I think what is relevant is what
15 happened between the witness and the Sheriff unless
16 Mr. Gilmore had something to do with that, and I
17 think he was after the fact, so I sustain the
18 objection.

19 BY MR. LUMUMBA:

20 Q. Did the District Attorney's Office, this District
21 Attorney sitting here, at any point in time did he approach you
22 asking you if you had any statements in your possession that
23 was taken from any witnesses connected with this case?

24 A. No, sir.

25 Q. Now you have actually been in the presence of the
26 District Attorney or met with him on several occasions about
27 this case, haven't you?

28 A. No, sir.

29 Q. Well, you were at the last court proceeding; right?

1 A. Yes, sir.

2 Q. And were you at the court proceeding which occurred
3 in Tupelo?

4 A. No, sir. I didn't testify in that.

5 Q. No, that is not what I asked you. Were you up there?

6 A. I was up there to testify, but I never testified. I
7 was up there about two hours one day.

8 Q. And have you ever been to this District Attorney's
9 Office?

10 A. No, sir.

11 Q. Never been there before in your life?

12 A. Never in my life, no, sir.

13 Q. Has he ever been to your station?

14 A. I don't think so unless he just happened by there.
15 He hasn't been there on business. I don't believe he has ever
16 been there.

17 Q. Never been to the jail?

18 A. No, sir.

19 Q. Has-- did you ever, were you ever present when any
20 statement was taken from Mr. Veal?

21 A. Yes, sir.

22 Q. Was the DA there?

23 A. No, sir.

24 Q. Who else was there?

25 A. John Johnson was there.

26 Q. Is that the only person besides yourself?

27 A. Yes, sir.

28 Q. And were you ever present when any statement was
29 taken from Mr. Hawkins?

1 A. No, sir.

2 Q. How is it that John Johnson wound up taking a
3 statement from Mr. Veal? How did he get there? Did somebody
4 talk to him, ask him to come?

5 A. How did John Johnson get there?

6 Q. Yes.

7 A. I called him; yes, sir.

8 Q. Oh, very good; very good.

9 (Mr. Lumumba confers with Mr. Freelon and with
10 the Defendant.)

11 Q. While you were in the jail, did you ever have a
12 discussion with Mr. Veal? While he was in jail, I mean?

13 A. Yes, sir.

14 Q. And how did that come about?

15 A. He sent word that he wanted to see me.

16 Q. Okay. And who brought you the word?

17 A. Alfred King, I think it was; one of the jailers.

18 Q. Does Alfred King still work at the jail?

19 A. Yes, sir. In fact, your law partner represented him
20 a couple of weeks ago.

21 Q. Is that right?

22 A. Yes, sir.

23 Q. Oh, I see. Maybe we need to talk to him then.

24 A. I expect he already has.

25 Q. Oh, okay, all right.

26 (Laughter).

27 Q. You didn't fire him, did you?

28 A. No, sir.

29 Q. All right.

1 A. Why would I fire him?

2 Q. All right. What about the situation with Mr.
3 Hawkins? How did you come in contact with him?

4 A. He was in Leflore County Jail.

5 Q. Okay. But did you ever have a discussion with him
6 about the Flowers case?

7 A. Yes, sir.

8 Q. And how did that come about?

9 A. He had just pled guilty or just got sentenced on a
10 charge, and I was going out of the courtroom, and he stopped
11 and told me he wanted to see me a minute, and I went right
12 there behind the courtroom in a judge's chambers and talked to
13 him.

14 Q. Do you know anything about a letter or a note he sent
15 to Ms. Childs?

16 A. No, sir.

17 Q. He didn't tell you about that?

18 A. He told me about it, but I never seen it.

19 Q. Oh, I see.

20 A. He told me he wrote a note to her.

21 Q. Did you write down what he told you?

22 A. Yes, sir.

23 Q. You did write down what he told you?

24 A. Yes, sir.

25 Q. Did you write down that he told you about the letter
26 to Ms., that he sent the letter to Ms. Childs?

27 A. I wrote what is on that piece of paper in your hand
28 there.

29 Q. I see. Can you find the place here where you write

1 down about--

2 BY MR. EVANS: --Your Honor, I would at least
3 like to see the document we are talking about.

4 BY THE COURT: Just let him, let him see it.

5 (Pause while Mr. Evans looks at document.)

6 BY MR. EVANS: All right.

7 BY MR. LUMUMBA:

8 Q. See if you can find anything in here about him
9 sending a note to Ms. Childs?

10 A. No, sir.

11 Q. You said no?

12 A. Yes, sir. I said no, sir.

13 Q. Well, when I was standing over there, you didn't know
14 whether it was in there or not, but now you know it's not in
15 there; right?

16 A. No, I told you I wrote down what was on that paper.
17 I didn't say it wasn't in there.

18 Q. Oh, I see. So it's not in there; right?

19 BY MR. EVANS: Your Honor, this piece of paper--

20 BY THE WITNESS:

21 A. --The document speaks for itself.

22 BY THE COURT: --Wait, wait.

23 BY MR. EVANS: This piece of paper is not
24 relevant to this hearing that we are here on today.
25 This hearing is specifically for one purpose. That
26 is whether or not the allegations made in the motion
27 were true or not.

28 BY THE COURT: I don't know what this paper is
29 at this point.

1 BY MR. EVANS: Apparently, this is just some
2 notes that the Sheriff made that are in his file
3 about what that person told him.

4 **BY THE COURT:** How is that relevant?

5 BY MR. LUMUMBA: Oh, I think--

6 **BY THE COURT:** --He is here to testify. I mean
7 how is it relevant?

8 BY MR. LUMUMBA: I think it's relevant because I
9 have a right to impeach him. I have a right to
10 impeach him. I have a right to see if what he is
11 saying is recorded anywhere in order to reflect
12 whether or not it is really accurate, truthful and
13 whether his, whether it's some of his recorded
14 recollection or whether it's not. So that is why
15 it's relevant. It is relevant just like any other
16 document that a witness writes out, and then he comes
17 to testify. The document that he wrote out, as long
18 as it has, is relevant to the case, as long as it has
19 that subject, is always relevant.

20 **BY THE COURT:** Well, if it's not inconsistent,
21 it's not.

22 BY MR. EVANS: And also, a point that he made is
23 exactly right. What may be relevant to the case may
24 not be relevant to this motion.

25 **BY THE COURT:** That's true too. We have got to
26 remember--

27 BY MR. LUMUMBA: --Well, so are we now saying
28 that we don't want to talk about-- the document has
29 what Mr. Hawkins allegedly told him. Now if what Mr.

1 Hawkins allegedly told him is not relevant for me, I
2 assume it's not going to be relevant for him when he
3 stands up here either.

4 BY MR. EVANS: Your Honor, I have no problem
5 with him introducing the document. The question that
6 he asked is what I objected to. The question that he
7 asked was not relevant.

8 BY MR. LUMUMBA: Judge, please. Let's, let's
9 stop pretending here. What I asked this gentlemen is
10 if he had wrote down what Veal told him. He said
11 yes-- not what Veal told, what Hawkins said. He said
12 yes. That pretends to be what he wrote down. Now if
13 there is something else he wrote down, he can tell
14 us. I'm now asking him if he wrote down anything
15 about passing a note to Ms. Childs. I already asked
16 him that, and he said that he, he said that he wrote
17 down what he was told by Hawkins, and I'm trying to
18 find out is if what he wrote down contains the
19 information about the Childs' information. He said
20 that Veal told him that-- not Veal, but Hawkins told
21 him that. He just said that Hawkins told him that.

22 BY MR. EVANS: Which is not relevant to this
23 matter.

24 BY THE COURT: How is it relevant to whether or
25 not he coerced him into doing it?

26 BY MR. LUMUMBA: It's relevant-- see the
27 question is not whether he coerced him, not for this
28 hearing. The question for this hearing is whether or
29 not he solicited, however; whether it was coercion,

1 and he can just request him to do it. It's still
2 improper. It doesn't make any difference whether he
3 coerced him. That's the law if you ever read it.
4 The law says that anybody, that when you get a snitch
5 to go into the jail to talk to somebody else to get a
6 statement, you can ask them; you can coerce them; you
7 can give them some money; you can make them a
8 promise, or you can maybe just do it as a favor. It
9 doesn't make any difference.

10 **BY THE COURT:** I am familiar with that, Mr.
11 Lumumba. But how is that relevant?

12 BY MR. LUMUMBA: So what we are trying to do is
13 determine whether or not what you heard from Hawkins
14 is accurate, and we are trying to find out through
15 this witness whether he can corroborate what Hawkins
16 says. And if he says he can corroborate what Hawkins
17 says, then I am trying to see, since he said he
18 recorded what Hawkins said, is it in his recollection
19 that it is recorded.

20 **BY THE COURT:** I hold that that is not
21 relevant. Move on. The objection is sustained.

22 BY MR. LUMUMBA: You know what? Are we going to
23 have a fair hearing here or are--

24 **BY THE COURT:** --We are going to let you ask
25 questions. He is going to answer them, and I'm going
26 to rule on the objections.

27 BY MR. LUMUMBA:

28 Q. Anywhere in the world did you write down what Hawkins
29 allegedly told you about sending a letter to Ms. Childs?

1 BY MR. EVANS: Your Honor, that is exactly what
2 I just objected to.

3 BY THE COURT: Sustained.

4 BY MR. LUMUMBA: No, that is not what he just--

5 BY MR. EVANS: --And I object to that form of
6 the question.

7 BY THE COURT: That is sustained.

8 BY MR. LUMUMBA:

9 Q. What is it that makes you recall that he said that to
10 you?

11 A. What he has told me on that piece of paper there?

12 Q. No--

13 A. --or whether or not he told me that he sent Ms.
14 Childs a note? Which one?

15 Q. Uh-hum.

16 A. Which one?

17 Q. What is it that makes you recall what he said about
18 the note to Ms. Childs, what you claim he said about a note to
19 Ms. Childs?

20 A. He just told me he had sent word to Ms. Childs that
21 he wanted to see me. I get, I get messages every day from the
22 jail, the prisoners might want to see me but--

23 Q. Is that right?

24 A. Yes, sir.

25 Q. Do you normally -- now when, now when you do these
26 things, do you normally write down notes of what prisoners tell
27 you if it's important?

28 A. If I think it is important enough to write it down.
29 If they maybe didn't, their grandmother didn't come see them

1 Sunday or something, no, I don't write that down but--

2 Q. --Well, do you think this conversation that you had
3 about this case with--

4 (Mr. Lumumba had sat down in a chair in the jury
5 box.)

6 BY THE COURT: --Mr. Lumumba, you have to stand
7 up to ask the questions in this court.

8 BY MR. LUMUMBA: Oh, do you?

9 BY THE COURT: Yes, sir.

10 BY MR. LUMUMBA: Okay, thank you.

11 BY THE COURT: And I appreciate you using the
12 podium too.

13 BY MR. LUMUMBA: All right, thank you.

14 BY MR. LUMUMBA:

15 Q. Did you think that the conversation that you had with
16 Mr. Hawkins was an important conversation?

17 A. Which conversation are you referring to? The one
18 about Ms. Childs or the one about the murder?

19 BY THE COURT: Come back and use the podium now.

20 BY MR. LUMUMBA: Can I get the exhibit?

21 BY THE COURT: Yes, sir.

22 BY MR. LUMUMBA: Is that all right?

23 BY THE COURT: Yes, sir.

24 BY MR. LUMUMBA: Okay.

25 BY THE COURT: It's not an exhibit, but you can
26 get that document.

27 BY MR. LUMUMBA: Can I get this document?

28 BY THE COURT: Uh-hum.

29 BY MR. LUMUMBA: All right, all right, okay.

1 You are not worried about me standing down here, are
2 you, Judge?

3 **BY THE COURT:** No, I'm worried about you
4 standing behind the podium.

5 BY MR. LUMUMBA: Wait a minute. When he stands
6 up and asks questions behind the table, that is all
7 right?

8 **BY THE COURT:** I am worried about you standing
9 behind the podium, Mr. Lumumba--

10 BY MR. LUMUMBA: --Why do I have to stand--

11 **BY THE COURT:** --I'm not going to debate with
12 you. Ask this man questions if you want to. Let's
13 move on with this hearing.

14 BY MR. LUMUMBA: Can I stand behind the table?

15 **BY THE COURT:** Yes, sir. You can stand behind
16 the table.

17 BY MR. LUMUMBA: I can. Either the podium or
18 the table?

19 **BY THE COURT:** Well, do what you want to. If
20 you don't ask questions, we are going to let the
21 witness off the stand.

22 BY MR. LUMUMBA: Well, if you don't allow
23 relevant answers to be given, then you might as well
24 let the witness off the stand.

25 **BY THE COURT:** Well, that's up to you.

26 BY MR. LUMUMBA: All right. No, it's up to you
27 because you--

28 **BY THE COURT:** --You ask the questions, Mr.
29 Lumumba, and I'm going to rule on them. Now ask a

1 question. Don't debate with me. I'm not here to
2 debate you.

3 BY MR. LUMUMBA: I'm not debating on you. I am
4 just recording the fact into the record.

5 BY THE COURT: Good. It's in the record now.
6 Move on.

7 BY MR. LUMUMBA: Well, it might not be
8 completely in the record.

9 BY THE COURT: It's complete as it's going to
10 get. Move on.

11 BY MR. LUMUMBA: Okay.

12 BY MR. LUMUMBA:

13 Q. Did you think the discussion that you had with him
14 concerning the events which were supposed to have occurred at
15 the Tardy Furniture Store was an important discussion?

16 A. Yes, sir.

17 Q. Have you been trained to write down things which are
18 important?

19 BY MR. EVANS: Your Honor--

20 BY THE WITNESS:

21 A. --Yes, sir.

22 BY MR. EVANS: With the Court's discretion, I
23 object on relevance. None of this is relevant to
24 what we are here for today. This is not the trial.
25 This is simply a motion on one issue.

26 BY THE COURT: And I have sustained the
27 objection about three times. Now let's move on to
28 another--

29 BY MR. LUMUMBA: --You haven't sustained that

1 objection.

2 **BY THE COURT:** Well, I have sustained one just
3 like it. So let's move on to different issues.

4 **BY MR. LUMUMBA:** Well, I tell you what I'm going
5 to do. I'm not one that believes in wasting my
6 time. It's apparent to me that this Court has no
7 intention of allowing a fair hearing in this case,
8 probably has no intention of allowing a fair trial in
9 this case. So that being the case, I'm not going to
10 waste my time asking this man questions when you
11 sustain objections, when you will turn right back
12 around when he gets up here and asks the same kind of
13 question, and allow him to answer. You have done it
14 several times today. You have sat in here and you
15 have scolded black people--

16 **BY THE COURT:** --All right, Mr.--

17 **BY MR. LUMUMBA:** --and did not scold--

18 **BY THE COURT:** --Mr. Lumumba, have a seat.

19 **BY MR. LUMUMBA:** Can I make a record--

20 **BY THE COURT:** --Mr. Evans--

21 **BY MR. EVANS:** --May I proceed, Your Honor?

22 **BY MR. LUMUMBA:** Can I make a record, Judge?

23 **BY THE COURT:** --No, sir. You can't. You can
24 proffer it after the hearing.

25 **BY MR. LUMUMBA:** All right.

26 **BY THE COURT:** You can't right now. You are
27 being disruptive.

28 **BY MR. EVANS:** May I proceed, Your Honor?

29 **BY THE COURT:** Yes.

1 BY THE WITNESS: Judge, could I get my file?

2 BY THE COURT: Yes, sir. I want the file back.

3 BY MR. LUMUMBA: You want the file back?

4 BY THE COURT: Yes, sir. I want, I want the
5 file back.

6 BY MR. LUMUMBA: Can I get a copy?

7 BY THE COURT: Yes, sir. Before the day is out,
8 you can, but right now I want it back.

9 BY MR. LUMUMBA: Thank you, Judge. Thank you.
10 Why do you need it?

11 BY THE COURT: Because I'm going to hand it to
12 the witness, and it doesn't matter why I want it.

13 (File was handed to the witness.)

14 BY THE COURT: Okay, Mr. Evans.

15 BY MR. EVANS: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. EVANS:

17 Q. Sheriff Banks, did you at any time plant anyone in
18 the cell with Curtis Flowers to elicit testimony from him about
19 his crime in Montgomery County?

20 A. No, sir. I did not.

21 Q. Is it true that the first time that you knew anything
22 about what Veal or Hawkins, either one, had found out from
23 Curtis Flowers is when they contacted you and told you about
24 it?

25 A. That's correct.

26 Q. And then you contacted my investigator, John Johnson,
27 and told him about what you had discovered; is that right?

28 A. Yes, I did.

29 Q. Did you, John Johnson, or anyone else try to get

1 Veal, Hawkins or anyone else to lie for the State or against
2 Curtis Flowers or try to get anybody to lie in any way about
3 this case?

4 A. No, sir. I did not.

5 BY MR. LUMUMBA: Objection. He can't testify to
6 what somebody else did.

7 BY THE WITNESS:

8 A. I said I did not--

9 BY THE COURT: --If he knows, he can.

10 BY MR. LUMUMBA: Pardon?

11 BY THE COURT: If he knows, he can.

12 BY MR. LUMUMBA: Well, how does he know if it's
13 not hearsay?

14 BY THE COURT: I don't know. Ask--

15 BY MR. EVANS: --I asked if he--

16 BY MR. LUMUMBA: --Well, improper foundation.
17 He has got to show us how he knows, so we can make
18 sure that what he is now testifying to is hearsay.

19 BY THE COURT: Reask your question, Mr. Evans.

20 BY MR. EVANS:

21 Q. Did you or did anyone in your presence attempt in any
22 way to get Frederick Veal or Maurice Hawkins to lie against
23 Curtis Flowers?

24 A. No, sir.

25 Q. Did you or anyone in your presence offer any reward
26 or any type of money or any leniency to anyone to get them to
27 lie and tell you something about Curtis Flowers?

28 A. No, sir.

29 Q. Were you present in the DA's office in Kosciusko at

1 the last hearing we had when Frederick Veal told me that Chokwe
2 Lumumba--

3 BY MR. LUMUMBA: --Objection. Excuse me;
4 objection.

5 BY MR. EVANS:

6 Q. --had attempted--

7 BY MR. LUMUMBA: --Objection.

8 BY MR. EVANS: I would like to finish my
9 question before there is an objection.

10 BY THE COURT: Okay, let him--

11 BY MR. LUMUMBA: --He has already said "told me"
12 which goes into hearsay.

13 BY THE COURT: Well, I'm going to let him finish
14 his question.

15 BY MR. EVANS:

16 Q. Let me start over. Were you present in the DA's
17 office in Kosciusko the last motion that we had when Frederick
18 Veal told me that Chokwe Lumumba--

19 BY MR. LUMUMBA: --That is not my name--

20 BY MR. EVANS:

21 Q. --had told him--

22 BY MR. EVANS: --May I finish my question, Your
23 Honor?

24 BY THE COURT: Yes, sir--

25 BY MR. LUMUMBA: --Well, can we pronounce my
26 name correctly?

27 BY MR. EVANS: I don't know how he pronounces
28 his name. I am pronouncing it the best I know how.

29 BY THE COURT: How is it pronounced?

1 BY MR. LUMUMBA: Well, he does a lot of things
2 the best he knows how--

3 BY THE COURT: --How is it pronounced?

4 BY MR. LUMUMBA: --but that is not good enough.
5 My name is pronounced Chokwe.

6 BY THE COURT: Okay.

7 BY MR. EVANS: Whatever his name is--

8 BY MR. LUMUMBA: --very good.

9 BY MR. EVANS: I don't care what his name--

10 BY MR. LUMUMBA: --Are we concerned about people
11 laughing--

12 BY MR. EVANS: --Your Honor--

13 BY THE COURT: --Have a seat, Mr. Lumumba.

14 BY MR. EVANS: --may I finish my question?

15 BY THE COURT: Have a seat. You can object at
16 the proper time.

17 BY MR. LUMUMBA: Okay, can I ask so I can hear
18 that--

19 BY MR. EVANS: --No, you can't. I am asking the
20 questions.

21 BY MR. LUMUMBA: No, I am just asking if we can
22 keep the audience under control.

23 BY THE COURT: Okay, everybody, everybody hold
24 it down.

25 BY MR. LUMUMBA: All right.

26 BY MR. EVANS:

27 Q. Let me start over again, Sheriff. Were you present
28 in Kosciusko in the DA's office on the last hearing we had when
29 this attorney sitting right here, when Frederick Veal told me

1 that he had told him that if he would leave and go to Chicago
2 before we got subpoenaed, that we couldn't get him back for
3 court?

4 A. I don't think I was present.

5 Q. All right. Did you or anyone else that you were
6 aware of do anything other than deliver information that you
7 had received from Frederick Veal and Maurice Hawkins to us?

8 A. Say that again.

9 Q. Did you do anything other than just tell us what
10 information you had found out?

11 A. No, sir. I, my train of thought-- I was trying to
12 think of that other question you asked me before that. I think
13 Veal told me what you just said, but I don't remember being
14 present when he told you.

15 Q. But you remember him telling you that?

16 A. Yeah, that that attorney right there, and I don't
17 want to try to mess your name up, but that attorney right there
18 told him he needed to get lost and go to Chicago.

19 Q. Told him he needed to get lost and go to Chicago?

20 A. Yeah.

21 BY MR. EVANS: Nothing further.

22 BY THE COURT: Redirect?

23 BY MR. LUMUMBA: I have no further questions.

24 BY THE COURT: Okay, is he finally excused for
25 today?

26 BY MR. LUMUMBA: Is who excused?

27 BY THE COURT: The witness.

28 BY MR. LUMUMBA: I don't, I don't need him any
29 more.

1 BY THE COURT: All right, Mr. Evans, do you?

2 BY MR. EVANS: No, Your Honor. Well, if we are
3 through with the motion.

4 BY THE COURT: Well, I mean I don't know about
5 that.

6 BY MR. EVANS: I would ask that he stay in the
7 courtroom-- courthouse for a short time until we
8 determine.

9 BY THE COURT: Okay. Mr. Banks, I want you to
10 do something for me. I want you to go in the Clerk's
11 office and get them to make a copy of that file so we
12 can--

13 BY THE WITNESS: --Okay.

14 BY THE COURT: And then if you will give it to
15 Mr. Freelon and Mr. Lumumba.

16 BY MR. HORAN: Ricky.

17 BY THE COURT: I guess you probably ought to
18 make two copies because I don't think the State has
19 one either.

20 BY MR. EVANS: Yes, sir.

21 BY THE COURT: Let the record reflect that the
22 Court is providing for both sides copies of the
23 Sheriff's file that he brought here today and which
24 he was questioned about during his interrogation.

25 WITNESS LEAVES COURTROOM.

26 BY THE COURT: Who will you have next?

27 BY MR. LUMUMBA: Frederick Veal.

28 BY THE COURT: Okay. Frederick Veal.

29 BY MR. LUMUMBA: He is in the back in the

1 witness room. Harvey, why don't you go get him?

2 (Mr. Freelon leaves the courtroom to go get the
3 witness.)

4 **BY THE COURT:** Have a seat back up here.

5 **BY THE WITNESS:** Sir?

6 **BY THE COURT:** Have a seat up here.

7 **FREDERICK VEAL,**

8 upon being recalled to testify as a witness again for the
9 Defendant on his motion, having been previously sworn,
10 testified again as follows, to-wit:

11 DIRECT EXAMINATION BY MR. LUMUMBA:

12 Q. Yes. Mr. Veal.

13 A. Yes, sir.

14 Q. You have already been sworn.

15 A. Yes, sir.

16 Q. Okay, now let me ask you this. Do you recall when we
17 talked about before; we had our discussion in here; we asked
18 you questions about being in Tupelo with Mr., uh, what is his
19 name?

20 A. Maurice Hawkins?

21 Q. Hawkins. You recall that; right?

22 A. Yes, sir.

23 Q. During that period of time, did Mr. Hawkins say
24 anything to you about whether he had been sent into the cell
25 with or asked to get information from Mr. Flowers?

26 A. Yes--

27 **BY MR. EVANS:** --Your Honor, I object on
28 relevance.

29 **BY MR. LUMUMBA:**

1 Q. What did he say?

2 BY THE COURT: What was the question?

3 BY MR. LUMUMBA: I asked if Mr. Hawkins told him
4 anything about going, being sent into the cell or
5 being asked to get information on Mr. Flowers.

6 BY MR. EVANS: I withdraw my objection.

7 BY THE COURT: Okay.

8 BY MR. LUMUMBA:

9 Q. Okay, go ahead. What-- could you tell me what Mr.
10 Hawkins said?

11 A. When we was in the hotel, he told me he was put in
12 there like I was put in there, to get information.

13 Q. Okay, and so he was put in where?

14 A. In the cell with Curtis Flowers.

15 Q. Did he indicate that he was asked to get information
16 from Flowers?

17 A. Yes, sir.

18 BY MR. LUMUMBA: I have no further questions of
19 this witness.

20 BY THE COURT: Any further questions of him?

21 BY MR. EVANS: No questions.

22 BY THE COURT: All right, Mr. Veal, you may
23 return to the witness room.

24 WITNESS LEAVES COURTROOM.

25 BY THE COURT: Who do you have next?

26 BY MR. LUMUMBA: We would like to continue the
27 hearing for the purposes -- no, we don't have any
28 other witnesses at this time.

29 BY THE COURT: Has the State got any?

1 BY MR. EVANS: None, Your Honor.

2 BOTH SIDES REST ON MOTION.

3 BY THE COURT: Okay, argument?

4 BY MR. LUMUMBA: Have you made your mind up
5 already?

6 BY THE COURT: Do you want to argue?

7 BY MR. LUMUMBA: Well, yes, I do, but I would
8 like to--

9 BY THE COURT: --Then go ahead and argue.

10 BY MR. LUMUMBA: Let me, let me state what I'm
11 doing. Let me put it as properly as possible. I
12 think at any point that I sense that the Court is not
13 fair and that it's not impartial, that it has lost
14 its impartiality, then I can ask the Court to recuse
15 itself from a motion or from the case. Under the
16 Judicial Canon of Ethics--

17 BY THE COURT: --I have read them. I understand
18 them.

19 BY MR. LUMUMBA: Okay. Do you?

20 BY THE COURT: Make your point.

21 BY MR. LUMUMBA: Well, under those ethics that I
22 have also read, it's your obligation, your duty to,
23 in fact, disassociate yourself with a case where you
24 have lost your ability, assuming that you had it to
25 start with, to be impartial. Now all I'm saying is
26 that, Judge, your rulings have suggested that you
27 may, for whatever reason, may not really be playing
28 with a balanced deck right now as far as, as far as
29 the treatment of one side of the room against

1 treatment of the other side of the room.

2 Now I know, I know, I know the gentlemen here
3 are laughing, and a lot of people here are outraged
4 that I would dare to say that, but then there is a
5 lot of people out there who really believe in
6 everything I'm saying. So you should keep that in
7 mind.

8 But the point that I'm making here is this: Is
9 that if that is the case, then let me go to somebody
10 who can make a fair decision, an impartial decision
11 where they are not bothered by whatever, and then we
12 will deal with it there. Now if that is not the
13 case, then I certainly have an argument to make.

14 **BY THE COURT:** Okay. Do you have an argument on
15 this motion?

16 BY MR. LUMUMBA: There is law, actually
17 voluminous law to support the proposition that it is
18 inappropriate for plants to be used to gather
19 information on defendants. Massiah v. United States
20 at 377 U.S.2d, and that is a 1964 case; United States
21 v. Henry, a 1980 case, 477 U.S. 264; U. S. v.
22 Gouveia, 467 U.S. 180 at 188, a 1984 case. And
23 Massiah v. U.S., by the way, is a case I cited prior
24 to that. Its page number is, I believe, 701. That
25 may be 201, but it is either 701 or 201. These cases
26 stand for the proposition that the 6th Amendment
27 prohibits the use of statements deliberately elicited
28 from a defendant. Once the 6th Amendment attaches
29 and the Defendant is in custody and the focus of the

1 investigation is on the defendant, and it's
2 inappropriate according to these cases to do it
3 either directly or through the use of some kind of
4 agent, some person who has been solicited for the
5 purposes of doing that.

6 We have here testimony from Mr. Frederick Veal,
7 a man who they despise today; he is just a low life.
8 He can't tell the truth. He is lying, but they
9 thought enough of him to call him back at the time
10 when they had a trial and use his testimony to
11 sentence this man to death. They didn't have no
12 problem putting him up there then. They had that
13 much confidence in him then. What is it that makes
14 them lose confidence today?

15 What he has told this Court is not only did the
16 Sheriff put him in the cell with Mr. Flowers and ask
17 him to get information from Mr. Flowers, specifically
18 on a gun, but information in general, but that he was
19 engaged in a conversation with Mr. Hawkins, a man who
20 can hardly walk out of the courtroom without falling
21 over - but I can't ask him if he used drugs, by the
22 way - but a man who has obviously some kind of
23 problem. You can hardly hear him up there because he
24 is so tired. But this Mr. Hawkins, who he stayed all
25 night in a hotel with and never said a word to him
26 according to Mr. Hawkins; Mr. Veal has quite a
27 different and more rational story. What he says is
28 that Mr. Hawkins told him that he was put in the cell
29 the same way.

1 Now you know that makes sense. You know why it
2 makes sense, Judge? Because Mr. Flowers was
3 represented. He had been represented from early in
4 March sometime at least, or he had been represented
5 from March, and I'm not sure exactly what date in
6 March he was represented, but he was represented
7 before any kind of contact with Veal and before any
8 kind of contact, certainly before any kind of contact
9 in July with this other gentleman, Mr. Hawkins.

10 Lawyers tell their clients consistently not to
11 talk to anybody about the case, and there is no-- and
12 they were supposed to have given the lawyers
13 discovery, and I think I remember them swearing in
14 this courtroom that they had given the lawyers all
15 the discovery in April because the lawyer told us in
16 the courtroom that he was still looking for a few
17 pieces of discovery. They swore up and down in the
18 last hearing that they had given them everything
19 which would have meant they would have given him any
20 discussion that would have occurred about what,
21 allegedly with Mr. Veal.

22 Now how-- and now are we to believe that this
23 Defendant talked to Mr. Veal, a person who he didn't
24 know before then, in March or somewhere about March
25 or April and made a statement to him; it's disclosed
26 to the lawyer, and then he goes back and talks to
27 somebody else in July?

28 You know, it's silly. It's like when I was,
29 used to try cases in Detroit, Michigan, and they used

1 to call it the dropsy case. The reason they called
2 it the dropsy case is because you could tell what the
3 testimony was going to be every time before the
4 police officer even got on the stand. He was going
5 to get on the stand and say, I was on the street; I
6 saw some guys standing on the corner. I got out of
7 my car--

8 BY MR. EVANS: --Your Honor, may I object? I
9 apologize for objecting again. I have tried not to.
10 This is simply closing statements or arguments on a
11 motion. This is not an attempt for Mr. Lumumba to
12 take the opportunity to make a speech to the crowd.
13 It has absolutely nothing to do with what we are here
14 on today. Again, I apologize for having to object,
15 but this is not relevant to anything that is before
16 the Court.

17 BY MR. LUMUMBA: I am trying to use an analogy.
18 Can I use an analogy?

19 BY THE COURT: Well, what I need for you to do
20 is argue the law to me just like I want Mr. Evans--

21 BY MR. LUMUMBA: --with an analogy. I can't do
22 that? I have seen Supreme Court cases where they use
23 analogies.

24 BY THE COURT: Well, yes, sir, but we are not in
25 the Supreme Court. We are here today--

26 BY MR. LUMUMBA: --Well, I--

27 BY THE COURT: --and I would like for you to
28 argue the law for me if you will.

29 BY MR. LUMUMBA: Obviously, we are not in the

1 Supreme Court. That is for sure. But let me say
2 this. Let me say this.

3 **BY THE COURT:** I'm as glad as you are.

4 BY MR. LUMUMBA: Thank God we are not in the
5 Supreme Court. Okay, but let me say this. Let me
6 say this, is that the situation is this: Is that
7 just as the analogy I was using where you have
8 predictable stories which are constructed by
9 prosecutor authorities and police officers in various
10 different situations, this is another one. This
11 happens all the time in Oktibbeha County. It happens
12 here. It happens up in Tate County. It even happens
13 down in Hinds.

14 Well, the defendant confessed in jail to
15 somebody they didn't even know, never seen before in
16 their life, and the person who is in jail just
17 happens to get out. They always just happen to get
18 out. They never get out because it's a deal. Well,
19 like Mr. Hawkins: Well, I sent the letter; I sent
20 the letter to the prosecutor that was over my case,
21 but I really wanted it to go to somebody that was
22 concerned about the case that Flowers was in. And
23 even though I wasn't trying to get no deal, I
24 happened to send it the day before I got sentenced,
25 just happened to.

26 You know actually if somebody was telling me
27 that, telling me that scenario and I was the trier of
28 fact, I would be embarrassed to think that they think
29 I was, I could fall for something like that. But in

1 any event, I think that it's not credible; what Mr.
2 Veal says is highly credible. Mr. Veal is their
3 witness, not our witness.

4 We have now come up with and still, we have come
5 up with several different - and I remind the Court -
6 several different statements that have been discussed
7 here now that we still don't have in evidence. And
8 we still don't have the discovery, but irrespective--
9 and if this Court is inclined to do anything else at
10 this point but to grant our motion, I ask that it be
11 left open and taken under advisement until we get all
12 the discovery because we obviously don't have it.
13 But in any event, there is no question that both of
14 these statements should be thrown out.

15 I mean, you know, if you're trying to put
16 somebody to death, the least you could do is try an
17 honest case. And the least we can get is an honest
18 evaluation of witnesses and an honest evaluation of a
19 scenario. There is no reason in the world that Veal
20 had to tell us what he told us other than the fact
21 that it's the truth. We couldn't put him in jail.
22 We couldn't let him out of jail. We can't give him
23 thirty thousand dollars. We can't put him in a hotel
24 in Tupelo, or at least we haven't put him in a hotel
25 in Tupelo. And the only thing that we did, we did
26 for Veal, we brought him to Jackson so he could talk
27 free of intimidation. That's the only thing we did,
28 and he told us what he told us, and he told you what
29 the truth was.

1 And we really pray that this Court, which is
2 selected to be impartial toward all the people,
3 everybody, can see this evidence in the light that we
4 see it or see it sufficiently independent from the
5 way that the District Attorney sees it to do what
6 ought to be done. And what ought to be done here,
7 there is no question. These statements need to be
8 stricken.

9 As the saying goes, Ray Charles could see it.

10 **BY THE COURT:** Is that all?

11 BY MR. LUMUMBA: Yes, sir.

12 **BY THE COURT:** Okay, Mr. Evans.

13 BY MR. EVANS: Thank you, Your Honor.

14 Your Honor, the law is very clear in this case.
15 This particular Motion is on whether or not to
16 suppress two statements that were made by Frederick
17 Veal and Maurice Hawkins. First of all, I want to
18 point out that both of these two individuals
19 testified under oath in Tupelo. Both of them at that
20 time testified that no one had put them in the cell;
21 that they had gone back in there; they had found out
22 things that Curtis Flowers had told them about his
23 murders; that they notified the Sheriff, and then
24 they went on to testify about the facts that Curtis
25 Flowers told them.

26 Maurice Hawkins testified today that no one had
27 put him back there. No one had attempted him to do
28 anything wrong. The Sheriff testified that he had
29 never at any point ever tried to get anybody to go

1 back in there and talk to them. Now they may have a
2 jury argument, but that is all.

3 The law is clear in Mississippi, and Wilcher v.
4 State, which was a death penalty case; it was death
5 penalty number 94-DPO761. It specifically says that
6 voluntary statements made to a private citizen by a
7 defendant do not implicate the Fifth or Sixth
8 Amendment to the United States Constitution.

9 This is a case where the Defendant made
10 confessions to outside parties that have nothing to
11 do with law enforcement. They were transferred then
12 from law enforcement officers to the prosecution, and
13 those statements were used in court. And there is
14 nothing that has been produced today that would
15 change that.

16 BY MR. LUMUMBA: Wilcher v. State also says that
17 they cannot use a plant to go into the cell to get
18 statements, and there is several other cases in the
19 State of Mississippi which have been decided by the
20 Supreme Court and/or the Court of Appeals which say
21 exactly the same thing. And so the issue is here do
22 you believe the man who comes to you, who they had
23 enough confidence in to put on the stand the last
24 time-- and let me just say this too.

25 We need to talk about what is the burden of
26 persuasion here. Whenever you talk about the
27 suppression of a statement, any statement they are
28 trying to introduce into court, it is not our burden
29 to prove that it was illegally obtained. It is their

1 burden to prove that it was legally obtained when you
2 are talking about a defendant's confession, which is
3 essentially what we are talking about here, a
4 defendant's statement implicating himself.

5 It is their burden, and if the Court needs some
6 law on it, I will supply it with some law. It is
7 their burden to show, and in fact, I have, I have
8 seen language that suggests that they have to show
9 beyond a reasonable doubt that the defendant's
10 statement was legally obtained. Now that is their
11 burden.

12 You have two people that come in here and say
13 two different things. How have they met their
14 burden? You have a sheriff who is obviously not
15 going to come in here and say yeah, I put him up to
16 it. If he was the kind of sheriff that would tell
17 the truth about it, he wouldn't be the kind of
18 sheriff that would do it in the first place. The
19 same man that they put all their confidence in to put
20 this man to death the last time comes in here and
21 tells you right to your face that they put me up to
22 it; they put this other guy up to it, and it's all a
23 bald-faced lie.

24 They have a burden to prove beyond a reasonable
25 doubt that that didn't happen, and they certainly
26 have failed to meet that burden. And where they
27 haven't said beyond a reasonable doubt, they have
28 used the terminology "clear and convincing evidence."
29 It's clear it's their burden. So it's not our

1 burden; it is their burden, and they have failed to
2 do it.

3 **BY THE COURT:** Okay, this matter is before the
4 Court on a Motion of the Defendant to Suppress the
5 confessions or alleged confessions made by the
6 Defendant to Mr. Hawkins and Mr. Veal in the Leflore
7 County Jail. The Court has heard the evidence on
8 this case. The fact is, in relation to two of the
9 witnesses, heard it twice now. The only evidence
10 whatsoever in support of this Motion is the statement
11 of Mr. Veal, who either perjured himself in Tupelo or
12 perjured himself here today. The things that he
13 stated in relation to the Sheriff have been denied.
14 The things that he related in relation to Mr. Hawkins
15 have been denied.

16 I find from the evidence today that I find no
17 prosecutorial or governmental problems with these
18 statements. In addition, these things are
19 credibility questions to a large extent, will be
20 subject to impeachment, and the jury has to decide
21 that, not me. So therefore, the Motion is
22 overruled.

23 What do you have next?

24 **BY MR. EVANS:** Your Honor, if they have nothing,
25 we have a motion we would like to make.

26 **BY MR. LUMUMBA:** We will have some other
27 motions. We don't-- let me see; we don't have
28 anything right now, do we?

29 **BY MR. FREELON:** No.

1 **BY THE COURT:** Okay. Other motions are due to
2 be filed by May the 1st. Let's decide when we want
3 to have that hearing on those motions now if y'all
4 can, and then I will hear you.

5 **BY MR. EVANS:** Yes, sir. The State at this
6 point again moves and requests of the Court to order
7 the Defendant through his counsel to furnish us
8 reciprocal discovery. It has been brought out today
9 again more evidence that they have in discovery that
10 we have not been furnished. They are taping
11 witnesses and not giving us copies of those tapes.
12 The Rules are very clear that we are entitled to
13 those. Mr. Lumumba made some comment about he didn't
14 feel like he had to give that to us, but the Rules
15 are clear.

16 **BY MR. LUMUMBA:** Judge, if you can find one rule
17 that compels us -- now remember, remember; let's put
18 this in context now. You have previously ruled that
19 you weren't going to make them give us anything that
20 the Rules didn't call for. Now read me a rule which
21 requires us to give them statements of witnesses that
22 we have taped, one rule, just one rule that requires
23 them to give-- requires us to. You are not going to
24 find it. You know what you are going to find? You
25 are going to find a rule which says that we have to
26 give them the statement of any witness that we plan
27 to call in our case in chief. And you have to give
28 them a statement of, you have to give them any
29 evidence, physical evidence that we intend to use in

1 our case in chief. There is nowhere in there that
2 requires us to give them a statement taken for the
3 purpose of impeaching their witness.

4 We have never listed Fred Veal, Frederick Veal
5 as a witness. At the time we decide that we are
6 going to use him as a witness, they will get whatever
7 they are entitled to.

8 BY MR. HORAN: Your Honor, that is absurd, that
9 if you take--

10 BY MR. LUMUMBA: --Well, read the Rules.

11 BY THE COURT: Well, you let him finish talking.

12 BY MR. HORAN: If you are taking a statement
13 from a witness for the purpose of impeaching one of
14 our witnesses, they can't be a witness for the
15 Defendant. The point being they can't testify unless
16 they-- they can't impeach our witness unless they
17 testify. Therefore, they are a witness. Therefore,
18 it's reciprocal discovery comes into play.

19 BY MR. LUMUMBA: No, no--

20 BY MR. HORAN: --He can't, he can't wait until
21 our man testifies and then give us a copy of a
22 statement. It's whether or not it's a potential
23 witness--

24 BY MR. LUMUMBA: --Judge--

25 BY MR. HORAN: --And he just said right then,
26 Your Honor; he said, we don't have to give him copies
27 of statements from our witnesses that may impeach one
28 of their witnesses. Well, they can't impeach a
29 witness unless they testify. Therefore, they are a

1 witness for the Defendant.

2 BY MR. LUMUMBA: Judge, Judge, what is he
3 talking about?

4 BY THE COURT: The Rules.

5 BY MR. HORAN: It's a Rule. It's a Rule. It's
6 9.04--

7 BY MR. LUMUMBA: --Can we--

8 BY MR. HORAN: --and it's a book--

9 BY MR. LUMUMBA: Can we read the Rule? Can we
10 read the Rule?

11 BY MR. EVANS: Your Honor, also, if I may add
12 in--

13 BY MR. LUMUMBA: --Excuse me; I haven't finished
14 yet--

15 BY THE COURT: --Wait--

16 BY MR. EVANS: --That was his witness today.

17 BY MR. LUMUMBA: I haven't finished. I haven't
18 finished yet. I haven't finished yet.

19 BY THE COURT: Wait just a minute.

20 BY MR. LUMUMBA: I thought he had.

21 BY THE COURT: Okay, wait a minute, Mr. Evans.

22 BY MR. LUMUMBA: Okay. The Rule does not say--
23 if you impeach a witness by taking the statement that
24 you have taken from him and impeach him when he is on
25 the stand, that is impeaching a witness. I am not
26 required to give them any statement which I am
27 holding merely for the purpose of impeaching one of
28 their witnesses. At the point that I put him on my
29 list and he becomes my witness, then I have to give

1 them a statement. There is no, there is no rule in
2 there that says any tape or any statement that I take
3 that I have to give to the prosecutor. The Rule says
4 that I have to give them statements which are of my
5 witnesses. In fact, now that is--

6 BY MR. HORAN: --that's correct--

7 BY MR. LUMUMBA: --what the Rule says. Now if
8 we are scared to read the Rule, if you give me a
9 minute; I will go to the car--

10 BY MR. HORAN: --They haven't read them all
11 day--

12 BY MR. LUMUMBA: --Excuse me; excuse me. I will
13 go to the car and get it, and I will read it. But
14 the point is that's what the Rule says. Now you hear
15 what I say the Rule says. I would like to see
16 somebody read a rule that does not say that.

17 BY MR. HORAN: I would like for Mr. Lumumba to
18 read the first rule today.

19 **BY THE COURT:** I would like to reserve my ruling
20 until I read all the--

21 BY MR. EVANS: --Your Honor, also, in line with
22 my motion, I would like to point out that this Court
23 has already at least four different times in this
24 case, because we have heard this in all four cases,
25 has already ruled at least four times that we were
26 entitled to any recorded statements. We were told
27 that there were no recorded statements. We have been
28 told at least three times that there were no recorded
29 statements.

1 BY MR. LUMUMBA: I have never told--

2 BY THE COURT: --Let me say this. If it's
3 required by the Rules and he doesn't produce it, he
4 is not going to be able to use it just like y'all are
5 not going to be either. I mean that's just the way
6 it is.

7 BY MR. EVANS: Well, Your Honor--

8 BY THE COURT: --And I'm going-- I am reserving
9 my ruling to decide whether or not it's within the
10 Rules. That's all I am doing.

11 BY MR. EVANS: Yes, sir.

12 BY THE COURT: Okay. Now then--

13 BY MR. HORAN: --What about a date?

14 BY THE COURT: A date.

15 BY MR. LUMUMBA: But I have a motion to produce
16 statements from one of their witnesses which is on
17 their witness list, and that is Mr. Veal and Mr.
18 Hawkins. From what Veal told us, there is a
19 typewritten statement from both of them, and they
20 have consistently denied that, but Veal has told us
21 that--

22 BY MR. HORAN: --They got it in discovery--

23 BY MR. EVANS: --They have got that. We have
24 furnished it to them months ago, and they have seen
25 it.

26 BY MR. LUMUMBA: Can I be interrupted at will?
27 It that all right?

28 BY THE COURT: Yes, sir, if they have furnished
29 it to you. They have told you that over and over

1 again that it has been furnished to you.

2 BY MR. LUMUMBA: Can I finish my sentence?

3 BY THE COURT: Yes, sir.

4 BY MR. LUMUMBA: We don't have a statement from
5 Veal that I'm aware of. We do not have a typewritten
6 statement from Veal, and we don't have what I believe
7 he is referring to as a statement. And plus, he said
8 it was recorded. Excuse me; excuse me. He said it
9 was recorded. That's what Veal said. I would like
10 the tape. I don't have any tape recording from
11 Veal.

12 BY MR. HORAN: We're not going to make copies of
13 tapes for them. They can listen to them.

14 BY THE COURT: Have-- let me ask you this. You
15 have given him a transcript of that?

16 BY MR. EVANS: Yes, sir, Your Honor.

17 BY THE COURT: Okay. Is there a tape of it?

18 BY MR. EVANS: Yes, Your Honor, which we have
19 furnished.

20 BY THE COURT: You have furnished the tape?

21 BY MR. EVANS: Yes, sir.

22 BY MR. LUMUMBA: To me?

23 BY MR. HORAN: We have made to the Gilmores all
24 the tapes available, all copies of the videos.

25 BY THE COURT: That is sufficient.

26 BY MR. HORAN: They are made available for them
27 to listen to. They can come to our office and record
28 them if they want to. We are not required to make a
29 copy for them.

1 **BY THE COURT:** That's right. That's sufficient.

2 BY MR. LUMUMBA: Oh, I don't have any problem
3 with coming to their office and recording it.

4 **BY THE COURT:** Okay. Then they are produced.

5 BY MR. LUMUMBA: You going to let me record it?

6 BY MR. HORAN: Sure.

7 BY MR. LUMUMBA: Very good. Very good.

8 **BY THE COURT:** Okay. Now can we get a date?

9 (Defense Counsel confer briefly.)

10 BY MR. FREELON: Judge, there is no way. I
11 don't have my calendar with me, Judge, and I am
12 booked. I would like the Court to at least give us a
13 day to look over my calendar at least. I don't want
14 to have to come back to the Court and ask the Court
15 to continue a date again without me having my
16 calendar.

17 **BY THE COURT:** Okay--

18 BY MR. FREELON: And I do have a trial--

19 **BY THE COURT:** --The motions are due May the
20 1st. I want to have the hearing within the first two
21 weeks of May.

22 BY MR. LUMUMBA: Now I can tell you this, that I
23 do have my calendar, and I have got a trial in the
24 first two weeks of May. It's going to be, it's
25 another capital murder trial. It's in Senatobia, but
26 actually, it's actually going to be in Batesville,
27 but it arises in Senatobia. So that is going to be
28 impossible the first two weeks.

29 **BY THE COURT:** Well, of course, it's your

1 motions, and I am trying to accommodate you.

2 BY MR. LUMUMBA: Well, yeah, I'm not opposed. I
3 mean I'm not opposing you. As soon as that trial is
4 over, which I expect it's going to be a two or three
5 week trial, my suggestion is if he doesn't have a
6 conflict, we set it at the end of May. I'm not
7 trying to delay it. Set it at the end of May. I'm
8 not, you know-- pardon?

9 (Mr. Lumumba and Mr. Freelon confer briefly.)

10 BY MR. LUMUMBA: Yeah, the motions are still due
11 May 1st. But if, in fact, Mr. Freelon's calendar is
12 open, we are going to try-- we want to have the
13 motions hearing as soon as possible in May. And, you
14 know, reasonably speaking, I figure, I am sure we are
15 going to be free the whole last week of May. I don't
16 think that the trial is going to last that long. And
17 if Mr. Freelon is free that week - the 25th, 26th,
18 27th, 28th, 29th, then we can set it during that
19 time; right?

20 BY THE COURT: Well, let me explain to you this
21 about both sides is I don't have to have but one of
22 you here. So I mean I can't accommodate-- there is
23 no way for me to work this court schedule around
24 everybody that is in this case's schedule. So as
25 long as one of you can be here, that is fine. But
26 that last week in May will be satisfactory.

27 BY MR. LUMUMBA: Okay.

28 BY THE COURT: But if you can be here, that is
29 sufficient, Mr. Lumumba.

BY MR. LUMUMBA: Okay, well, let me-- we, even though we understand that's your requirement that only one of us be here, and we appreciate that because that will accommodate us on occasion, we would like, if possible, to have both of us here because we think both of us are needed. If we can't accomplish that, we will do it anyway. I mean we will do something.

BY THE COURT: Okay. I want you both here too, but I'm not going to delay these hearings because of trying to get everybody together because I can't do that. Okay. Let me look at my calendar, and y'all look at y'all's, and we will-- you say your whole week for that last week is open?

BY MR. LUMUMBA: The last week in May is open.

BY THE COURT: Okay. I will get with y'all, and we will pick one, pick a day. Okay, nothing further today? Court is adjourned.

BY MR. LUMUMBA: Judge, I have one other thing to ask. I would like to ask the Court to-- I think the Court denied my motion to pay for the transcript of the last proceedings; is that correct?

BY THE COURT: Yes, sir.

BY MR. LUMUMBA: I would like to ask the Court to pay for the transcript of this proceeding. Mr. Flowers is indigent. He doesn't have the money to pay for it, and we need the transcript.

BY THE COURT: Okay, that motion is denied.

HEARING OF MARCH 3, 1998 CONCLUDED

1 (ON JULY 8, 1998, AT APPROXIMATELY 9:55 A.M.,
2 THE SPECIAL VENIRE WAS DRAWN IN THE CIRCUIT CLERK'S OFFICE OF
3 THE LEE COUNTY COURTHOUSE IN TUPELO, MISSISSIPPI FOR CAUSE
4 NO. CR97-379. THE FOLLOWING PEOPLE WERE PRESENT: THE
5 HONORABLE JUDGE CLARENCE E. MORGAN, III; HONORABLE DOUG EVANS
6 AND HONORABLE KEVIN HORAN REPRESENTING THE STATE OF
7 MISSISSIPPI; HONORABLE HARVEY FREELON AND HONORABLE JOHN
8 GILMORE REPRESENTING THE DEFENDANT; THE DEFENDANT CURTIS
9 FLOWERS; MRS. JOYCE LOFTIN, LEE COUNTY CIRCUIT CLERK; AND
10 MRS. CAROL HORTON, DEPUTY CLERK.)

11 **BY THE COURT:** Let me put something on the
12 record first. We are in the Circuit Clerk's Office
13 of Lee County. Present are the District Attorney
14 and attorneys for the Defendant, Curtis Flowers,
15 Harvey Freelon and John Gilmore. We are here for
16 the purpose of drawing the venire for the case that
17 is set for trial on September the 14th. We are
18 drawing 350 jurors at this time. Any of y'all want
19 to put anything in the record?

20 **BY MR. EVANS:** No, sir.

21 **BY MR. FREELON:** Just for the record, there is
22 a motion if there is evidence available, we are not
23 waiving a motion for change of venue if there is
24 evidence available at any time where venue may need
25 to be changed. This is not waiving that.

26 **BY THE COURT:** No, and I think the order is
27 already on the record. If during your voir dire it
28 becomes necessary to change the venue, that motion
29 is preserved for that time. Okay.

1 (Clerk enters command to draw jury in the
2 computer. Long pause.)

3 BY MS. HORTON: How many copies are we going
4 to need?

5 BY MR. HORAN: Seven. We had seven last time.

6 BY MS. LOFTIN: Seven.

7 BY MS. HORTON: Is that counting ours? We can
8 get ours later.

9 BY MS. LOFTIN: Yeah. Let's do ten.

10 (Further pause while the venire was being
11 printed.)

12 **BY THE COURT:** For the record, we have drawn
13 this venire here, and all three of these cases are
14 set for September the 14th. This venire would
15 serve for whichever one is tried on that day. Mr.
16 Freelon's case has priority, but should something
17 happen on that, then this venire will be for the
18 other two. That was your understanding anyhow,
19 wasn't it, Mr. Gilmore?

20 BY MR. JOHN GILMORE: That's what I was told.

21 BY MS. LOFTIN: Here is seven copies.

22 **BY THE COURT:** Okay. Who gets all these?

23 BY MR. HORAN: We got two; they got one
24 apiece. Carol is getting us some more.

25 (Copies of jury venire were handed out.)

26 **BY THE COURT:** Okay, let's go hear the
27 motion.

28 (WHEREUPON, THE COURT, ALL COUNSEL PRESENT ON
29 THIS DATE WITH THE EXCEPTION OF MR. JOHN GILMORE,

1 THE DEFENDANT, AND THE CLERK WENT UPSTAIRS TO THE
2 COURTROOM OF THE LEE COUNTY COURTHOUSE AT
3 APPROXIMATELY 10:16 A.M. ON JULY 8, 1998, FOR A
4 MOTION HEARING AS FOLLOWS:)

5 BY THE COURT: Okay, gentlemen. What have we
6 got?

7 BY MR. FREELON: I think you had mentioned
8 something about the subpoena. That was the only
9 other--

10 BY THE COURT: That's the only thing I know
11 that is pending. If y'all want to hear that, we
12 can hear that today.

13 BY MR. FREELON: That's the only thing, that's
14 the only-- I don't have any other things to discuss
15 basically.

16 BY THE COURT: Okay. Well, do y'all want to
17 be heard on it? I guess you do.

18 BY MR. HORAN: Which motion, Judge?

19 BY THE COURT: It's the motion over the
20 subpoena. Both of you have got motions over the
21 subpoena. Y'all have got one to quash, and he has
22 got one basically to quash your motion. I guess
23 that's the way you would describe it.

24 BY MR. EVANS: Yes, sir.

25 BY MR. FREELON: Do you want me to speak from
26 here, Judge?

27 BY THE COURT: Yeah, that is fine.

28 BY MR. FREELON: Okay. On or about I think
29 about May 22nd, a couple of months ago, we filed a

1 subpoena with the Department at Whitfield, the
2 Mississippi State Department Hospital. We have
3 received information that the witness, one of the
4 witnesses in this, one of the witnesses who
5 testified at the last trial, Maurice Bernard
6 Hawkins, before the trial and actually after the
7 trial had received mental, had been mentally placed
8 into the mental institution of the Department,
9 State Department of Mississippi. And we have
10 reason to believe that at that point in time that
11 some things that may have been said at the trial as
12 far as the witness accusing Mr. Flowers hereof of
13 committing, actually admitting to the murder, that
14 Mr. Hawkins was one of the main, one of the State's
15 main witnesses at the last trial.

16 We have reason to believe that at the time
17 that he testified as well as at the time that the
18 statement was allegedly given that Mr. Hawkins'
19 mental capacity was being affected mentally in
20 several different ways. We have reason to believe
21 that his-- he may not even have been able to even
22 testify. He may have not even been able to even be
23 a witness at that point in time mentally, mentally
24 able to be a witness.

25 And our client here, Your Honor, of course,
26 have a 5th and a 14th-- we have a due process right
27 to information and especially in a criminal matter
28 where he has been accused of a murder. And I guess
29 you know the State of Mississippi have always said

1 that any time and especially in a murder trial and
2 someone is being placed or accused of a murder, I
3 think it's in the best interest of the State of
4 Mississippi and it's in the best interest of
5 justice that although there may very well be a
6 privilege information, the constitutional rights of
7 due process would trump any, will trump a
8 privileged information if that information is going
9 to lead to a fair determination of justice.

10 So what we have asked for from the Mississippi
11 State Hospital is information on Maurice Bernard
12 Hawkins pertaining to his mental capacity during a
13 certain time. We feel that because our client has
14 a due process right to cross-examine and to get
15 that information and he is being accused of
16 actually admitting to a murder, that we should have
17 an opportunity to see were Mr. Hawkins actually
18 capable of testifying at that time or was he under
19 influences, mental influences at the time that he
20 testified and at the time the statement was given
21 and at the time or during the time of this trial.
22 And now we have filed that motion, and of course,
23 we also contend that the State of Mississippi or
24 the District Attorney's Office does not have
25 standing to file a motion to quash the subpoena.
26 If a motion to quash the subpoena is going to be
27 filed, we think it should be filed by the
28 department, Mississippi State Department of Health
29 attorney. I mean as a matter of fact, I think the

1 law is clear the onliest one who can invoke the
2 privilege information is the Mississippi State
3 Department of Health and not the State, not the
4 District Attorney's Office.

5 So we ask that that information be, at the
6 Mississippi State Hospital pertaining to Maurice
7 Bernard Hawkins because he is an essential witness
8 in the sense of, to the State's case in chief, and
9 he is actually accusing our client of actually
10 confessing to this crime. We think that justice
11 require that we be allowed to examine his mental
12 capacities at the time that he was into the mental
13 institution with the State of Mississippi.

14 **BY THE COURT:** Is the case you are relying on
15 the Golden Triangle case?

16 **BY MR. FREELON:** That is-- Your Honor, we are
17 relying partly on that case, but what we are really
18 relying on, Your Honor, is the Constitution, the
19 Fifth Amendment right to due process or any rights
20 to due process that he may have to cross-examine
21 his witnesses.

22 Now the Golden Triangle case, we understand
23 that that case deals with partially with the
24 statute that deals with cuts and bruises and
25 allowed the police or it allowed the District
26 Attorney to go in because, first of all, I think
27 the hospitals have a right, have a duty to anybody
28 who has been cut, lacerated and things of that
29 nature. They have a duty to report certain

1 things. But however, that case did state clearly--
2 (Brief pause while Mr. Freelon looks through his
3 papers.)

4 BY THE COURT: I have read it. I am familiar
5 with it. I just wanted to make sure that was the
6 case that you--

7 BY MR. FREELON: --No, no. That is part of the
8 case, Your Honor. Now we understand that that case
9 dealt with another statute, but the case did read
10 and there was statements that was made about the
11 interest of justice. You know, Where there is an
12 investigation into a serious and/or dangerous
13 felony, public policy must override the rights of
14 the individual. You know, and I think we are
15 talking about a serious felony in this case. And I
16 don't think they exclusively said that any time
17 there is a public policy involved, there has to be
18 another statute that would allow it to take it out
19 of the privilege. What we are talking about is his
20 constitutional right to due process, and a witness
21 who have placed his credibility-- Mr. Hawkins is
22 the one who has placed his credibility into
23 question in this trial. And once he places his
24 credibility into question, I think that the accuser
25 has a right to cross-examine and to determine if
26 his credibility or if he is able to even stand for
27 trial and be able to be competent to testify at
28 trial.

29 BY MR. EVANS: Your Honor, there are several

1 issues I would like to raise. I believe that case
2 specifically says that there is a doctor-patient
3 privilege that cannot be waived unless the patient
4 waives it. In this particular case there is no
5 statute as there was in that case that makes an
6 exception to it. Also, there has been nothing here
7 today except some accusations made by an attorney.
8 There has been no evidence before this Court of any
9 reason that they would be entitled to anything that
10 is down there.

11 Another issue that I think is important is
12 this is something, if there was any treatment for
13 anything, it was done at a probably year later than
14 the time this case was tried, that this evidence
15 was adduced in the jail in Leflore County. That is
16 not relevant to the issue there. This Court has
17 heard that particular witness testify on several
18 occasions, and I think can take judicial notice
19 that that witness was a competent witness and was
20 able to clearly testify and answer questions from
21 both sides.

22 But mainly, the Defense has raised no issue
23 through any evidence that there is a need for this,
24 and also the doctor-patient privilege prohibits
25 that information from being released. I think that
26 case clearly states that that cannot be done unless
27 there is a statute that makes an exception for it.

28 **BY THE COURT:** Okay, I find that it is
29 privileged information, and that neither one of you

1 are entitled to it unless Mr. Hawkins waives that
2 privilege. If he does that, then you will both get
3 copies of it. Somebody furnish me an order to that
4 effect.

5 Okay, nothing else to be heard; is that
6 right?

7 BY MR. FREELON: Nothing else to be heard.

8 BY MR. EVANS: Your Honor, did we get this
9 today?

10 (Mr. Evans and Mr. Horan confer briefly.)

11 BY MR. EVANS: We have been given copies of
12 another subpoena duces tecum that has been filed on
13 the custodian of the records of Itta Bena Police
14 Department wanting them to bring their entire file
15 pertaining to any criminal charges or convictions
16 of one Marcus Bernard Hawkins from July 1st, 1980,
17 to July 1st, 1998, and I would ask at this point
18 that that subpoena be quashed. It is not
19 relevant. The rules specifically say that they are
20 only entitled to any felony convictions on any
21 witnesses. They are not entitled to a police file
22 on any charges that may have been filed on anyone.
23 This is not relevant, and it is way outside the
24 rules of discovery. It is way outside any possible
25 subpoena would have the authority to ask for.

26 BY MR. FREELON: Your Honor, I don't even have
27 to even respond. I think it is clearly relevant.
28 I think we are, we are required to get any
29 information that is relevant in this matter that

1 would lead to any, anything that may be
2 discoverable or any information that may lead to
3 any just result in this case. That is not
4 privileged information. That would allow if this
5 gentlemen has been arr-- anything that goes toward
6 his character; if he has been, if there is bad
7 checks or if there is any information that may lead
8 to his bad character. He is putting his
9 credibility on the line in this case.

10 Now I think the Supreme Court in the State of
11 Mississippi has made it clear. As a matter of
12 fact, if you give me a second, I will read through
13 this information right here and give you the exact
14 case law which states that even misdemeanors, even
15 misdemeanors, if we request that information --
16 whether it can be used at trial is a question that
17 you must make that determination. But if we can
18 use it to determine if it's relevant in the case in
19 chief, we make that determination; then bring that
20 to you. And if they want to make a motion at that
21 time, motion in limine or whatever it may be, we
22 will do that.

23 **BY THE COURT:** Okay, here is what I want y'all
24 to do on that. Y'all need to file a formal motion
25 on that to quash.

26 **BY MR. EVANS:** Yes, sir.

27 **BY THE COURT:** And then I want both sides to
28 send me what authority they are going to rely on,
29 and then I will go from there.

1 BY MR. EVANS: Your Honor, we would ask that
2 we have the authority get in touch with the Itta
3 Bena Police Department and tell them to hold off on
4 giving any information until we have had a chance
5 to be heard before the Court.

6 BY THE COURT: Right. They are not to furnish
7 anything until I can rule on that, and I will do
8 that as quick as y'all can get me the authority.

9 BY MR. HORAN: Your Honor, the only other
10 thing about the subpoena is the rules specifically
11 state that they are supposed to put us on notice on
12 any of these subpoenas, and they have filed, I
13 believe five. We have not been notified. They are
14 way outside the form of the rule. And I don't know
15 if that's something that I need to respond to in a
16 motion, or is that something that-- I mean is it
17 asking too much that we get notice on any subpoena
18 duces tecum?

19 BY THE COURT: Mr. Freelon, I think you do;
20 you have got to give them notice now on a subpoena
21 duces tecum.

22 BY MR. FREELON: Actually, I think they got
23 notice this morning, but I think--

24 BY THE COURT: --But I mean you have got to do
25 it when you do it.

26 BY MR. FREELON: I understand that. I mean
27 but, Your Honor, I just made these; I just got
28 these copies this morning, but Counsel is correct.
29 I do know I did not, there was at least one

1 subpoena because I don't think I filed more than
2 one other subpoena that I did not give notice, I
3 don't believe I gave notice on. But he did get
4 notice on that.

5 **BY THE COURT:** I'm going to direct you from
6 now on that when you file these things, that the
7 day you file them you furnish the notice to the
8 State. Likewise, if the State should have any of
9 those, do the same thing.

10 **BY MR. EVANS:** Your Honor.

11 (Pause while Mr. Evans and Mr. Horan confer.)

12 **BY MR. EVANS:** One thing, and the Court may
13 not want to address this today. But on March the
14 2nd, we had a hearing in Montgomery County
15 Courthouse at Winona, Mississippi. Mr. Lumumba
16 represented the Court that he did, in fact, have
17 discoverable material that he was not going to give
18 to the State. Pursuant to that, we filed a
19 motion. This Court entered an order compelling
20 discovery on March 23rd, 1998. We have still not
21 gotten any discovery. We have not gotten one word
22 of discovery in this case, and I would like to know
23 at this point if the Defense is saying that they
24 don't have any discovery they intend to use at
25 trial or if they are just not going to follow the
26 Court's order.

27 **BY THE COURT:** Mr. Freelon, let me say, of
28 course, you have gotten the order, and you were
29 there when I gave the order, and those deadlines

1 have certainly passed. If y'all have discoverable
2 material and you want to use it, and you expect to
3 use it at trial, you have got to furnish this stuff
4 or you are going to run a real risk of me not
5 allowing it. Plus willful violations of discovery
6 are going to result in some sanctions on somebody,
7 and I don't want to have to do that. So if y'all
8 have discoverable material, that needs to be
9 produced immediately.

10 BY MR. FREELON: Your Honor, okay. How soon
11 can we, because we need to get the motion-- we need
12 to get the subpoena from the City of Itta Bena as
13 soon as possible. Now if these gentlemen can get
14 hold to the case law, you know, I can get hold to
15 the case law. I will be more than happy to do that
16 right here today because we are trying to get this
17 information as soon as possible.

18 BY THE COURT: And I want you to have it as
19 soon as possible if you are entitled to it.

20 BY MR. FREELON: So you will make a ruling
21 without-- we won't need another hearing?

22 BY THE COURT: No, we are not going to have
23 another hearing. I will make a ruling based on
24 what y'all submit to me and what my own research
25 finds.

26 BY MR. FREELON: Can you give us a time frame
27 to have that ruling in because I really want to get
28 this information as soon as possible?

29 BY THE COURT: Well, the time frame is going

1 to depend on how quick y'all get that stuff to me.
2 And then when I do that, then I will do it
3 quickly. I think I pretty well have done that on
4 everything else y'all have asked so far. So you
5 are not going to be held up by me.

6 BY MR. FREELON: But I don't want to be held
7 up at all on this motion, Your Honor.

8 BY THE COURT: No, sir. I understand.

9 BY MR. FREELON: Thank you very much.

10 BY MR. HORAN: Does Mr. Gilmore have anything
11 to bring up?

12 BY THE COURT: No, Mr. Gilmore is gone. Okay,
13 the evidence is in this box. It's going to be,
14 show and tell will be in this room.

15 (COUNSEL FOR BOTH SIDES AND THE DEFENDANT WENT
16 INTO THE CONFERENCE ROOM ADJACENT TO THE COURTROOM
17 TO VIEW THE EXHIBITS FROM THE TRIAL IN CAUSE NUMBER
18 CR97-369. PROCEEDINGS OF 7/8/98 WERE CONCLUDED.)
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1 ON SEPTEMBER 2, 1998, COURT WAS OPENED AT
2 10:00 A.M. IN TUPELO, MISSISSIPPI, IN CAUSE NO. CR97-372 WITH
3 JUDGE MORGAN PRESIDING. THERE WAS A HEARING ON MOTIONS WITH
4 THE FOLLOWING PEOPLE PRESENT: REPRESENTING THE STATE, HON.
5 DOUG EVANS AND HON. KEVIN HORAN; REPRESENTING THE DEFENDANT,
6 HON. CHOKWE LUMUMBA AND HON. HARVEY FREELON. THE DEFENDANT
7 WAS ALSO PRESENT SHORTLY AS WILL BE NOTED.

8 **BY THE COURT:** All right, gentlemen. What
9 have y'all got first?

10 BY MR. LUMUMBA: Judge, we have several
11 motions today. Let me ask you this. Is the
12 Defendant here?

13 **BY THE COURT:** He is supposed to be. Now I
14 have not seen him.

15 BY MR. HORAN: He is in the second room, I
16 believe.

17 BY MR. LUMUMBA: May we bring him in, please?

18 **BY THE COURT:** Yes, sir.

19 (DEFENDANT ENTERS THE COURTROOM.)

20 **BY THE COURT:** Yes, sir.

21 BY MR. LUMUMBA: We are prepared to proceed.
22 Judge, what we would like to do at this time is
23 actually, there is actually several motions that we
24 have up. And one is a Motion to Dismiss for
25 Prosecutorial Misconduct and a Motion for Judicial
26 Recusal, or in the alternative a Motion for
27 Prosecutorial Recusal. We would entertain this
28 Motion first. There is only-- and I will begin the
29 presentation of this Motion. Is that clock right?

1 **BY THE COURT:** No, sir. It's 10 o'clock.

2 BY MR. LUMUMBA: 10 o'clock; okay, good.

3 Okay, this Motion is pretty much self-explanatory,
4 but I would join with this Motion and indicate to
5 the Court that if the Court can recall, I filed a
6 motion to adopt the motions which were filed by a
7 prior counsel in this case. And there is-- it is
8 in the file, the motion to adopt prior counsel's,
9 and the only reason I bring that up right now is
10 because they made a motion for recusal also, and
11 the grounds that they put in it was that the Court
12 was, they believed, related to one of the victims
13 in the case, related to somebody in the case. The
14 Court denied the motion. I don't really remember
15 what the grounds was. The Court denied the motion
16 on it, but I would join with that motion and use
17 this, that as an additional grounds to the
18 arguments that I am making here.

19 **BY THE COURT:** Well, I'm not related to
20 anybody in the case.

21 BY MR. LUMUMBA: Okay. Well, maybe they were
22 incorrect. I am just--

23 **BY THE COURT:** Well, they were.

24 BY MR. LUMUMBA: Well, if they are, well, the
25 Court would know better than me. I would say at
26 this time, Judge, is that the reason we bring this
27 Motion for Prosecutorial Misconduct and for Recusal
28 is that on at least two different occasions, and we
29 believe probably others, the State or agents of the

1 State have endeavored to cover up Brady material,
2 Box material, material which is relevant to the
3 Defense and beneficial to the Defense in this
4 case.

5 On one such occasion we are talking about
6 Maurice Bernard Hawkins. Attached to my motion is
7 an exhibit which is an exhibit which is an
8 interview of Mr. Hawkins where he indicates that
9 he, in fact, has a cocaine problem. He has had it
10 for some time, that the State was aware of it. I
11 don't know if he says all this in the exhibit, but
12 he has said that the State was aware of it. And
13 the rest of the motion pretty much says that the
14 State is aware of the fact that he was charged with
15 sale of cocaine. Banks, the Sheriff, interceded
16 and what happened in exchange for his testimony for
17 this case, that cocaine charge was remanded to the
18 files. And the second case, which was a burglary,
19 he was put on house arrest. And that was in
20 exchange for testimony in this case.

21 The State, knowing that to be the case or
22 agents of the State knowing that to be the case,
23 allowed Mr. Hawkins to climb to the stand and to
24 testify at the last trial, at the last session.
25 Now I don't know about at the last trial, but at
26 the last session, that he had been offered no deals
27 or nothing for his testimony and that, in fact, I
28 think he testified that the B & E was not even,
29 sentence had nothing to do with this case but, in

1 fact, it did. The State knew that it did, and the
2 State in its ingenuity, in fact, opted to file a
3 motion to quash our subpoena for records which
4 would have disclosed the arrest for cocaine, sale
5 of cocaine. The State moved to suppress it. The
6 Court-- and actually, the State didn't have
7 standing even to make the motion because it's not
8 the state record we are looking for. It was the
9 record of the Defendant. If Maurice Hawkins felt
10 he had any privacy rights, then he could have made
11 the motion. Also, we have been told by the Court
12 and by the Itta Bena Police Department that the
13 records are actually public records anyway. So
14 anybody could have seen them--

15 **BY THE COURT:** --No, I told Mr. Freelon that
16 they were, that the Justice Court records were
17 public records. I didn't make any comment one way
18 or another about the Itta Bena records.

19 **BY MR. LUMUMBA:** Okay, but--

20 **BY THE COURT:** --It may be true but I did not
21 make that--

22 **BY MR. LUMUMBA:** --Okay, well, we were told
23 that they were public records, and so actually when
24 the Court sustained their motion to suppress all,
25 well, to suppress records which were related to
26 ongoing investigations, that's what-- the Court
27 sustained it to that extent. When that motion was
28 sustained to that extent, we actually were being
29 deprived of something which an ordinary citizen

1 would have had a right to see. The second thing
2 is, is that we have reason to believe that there is
3 no ongoing investigation, that the only reason why
4 this was suppressed probably - whether the Court
5 knows about it or not is not clear to us - but is
6 to prevent us from getting this information.

7 Now we think this is a violation; this is
8 prosecutorial, inappropriate and misconduct
9 behavior to try to hide information from us through
10 a ruse. We also believe that there was an ex parte
11 communication that took place between the Court and
12 somebody from the District Attorney's Office on
13 this issue. And the reason why we have reason to
14 believe that is because Mr. Freelon talked to the
15 Assistant District Attorney prior to the Court made
16 a ruling, and he pretty much told us what the
17 Court's ruling was going to be. He told us we
18 weren't going to get all we were looking for, and
19 so what he was endeavoring to do was, I guess, to
20 scratch out something to us which would be less
21 than what we were looking for. And he became upset
22 with Mr. Freelon when he persisted that we were
23 entitled to what we were looking for, and then at
24 that point he hung up the phone on Mr. Freelon.

25 But in any event, his conversation revealed to
26 us that ex parte communication had taken place.
27 Shortly thereafter, we did get an order from the
28 Court which sure enough precluded us from getting
29 at least part of what we wanted, and that was the

1 cocaine arrest which apparently was disposed of
2 later on.

3 For the record, I also want to make it clear
4 that our motion also addresses the issue of medical
5 records. We made a subpoena for medical records.
6 We have now discovered that Mr. Hawkins has had
7 serious problems emotionally, psychologically,
8 depression, that he has actually been treated
9 medically on perhaps five different occasions in
10 some kind of institutionalized form for either drug
11 addiction or depression as he recalls it. There is
12 no telling what the records will say. He tells me
13 that the State is well aware of it; in fact, have
14 been in contact with his doctor at Whitfield.
15 Whitfield is the State Hospital, either the state
16 or agents of the state in terms of police
17 department.

18 And that situation so exists that we were
19 being precluded from having records. He has been
20 hospitalized before. He testified he had been
21 hospitalized after he testified. He had an ongoing
22 cocaine problem. And so we were being deprived of
23 discovery which could have led to admissible
24 information. In this case we think the Court's
25 behavior was absolutely inappropriate and showed
26 bias because what it did, it allowed the State this
27 cloak to shield us from this information, and what
28 the Court did in effect which was inappropriate, it
29 allowed the State to make a motion which it had no

1 standing to make. The State does not have a
2 privilege against Mr., which precludes Mr. Hawkins'
3 records from being produced.

4 Normally what would occur in a case like this,
5 Judge, when you are trying to get information that
6 an institution wants to protect, the hospital could
7 have well come in and filed a motion to quash
8 claiming that the doctors and the hospitals could
9 not release the records unless they violated the
10 privilege. Mr. Hawkins could have filed the
11 motion. Mr. Hawkins has told us that he wasn't
12 even consulted about it until after the decision
13 was already made by the Court. So at no point did
14 the Court see fit and did the DA see fit to go
15 through the correct procedures, but what was done,
16 we think this is Brady material which, in fact, we
17 think would cause, would violate any decision which
18 is made in this case. In other words, it would
19 make it an unconstitutional decision. It's a
20 serious violation of Box which is the state law on
21 discovery and a critical violation of Brady
22 material. Brady says anything that would help in
23 the preparation of the defense.

24 And finally, on that issue we might note that
25 on that issue we note that the information that was
26 denied was information which could have been used
27 by the defense perhaps to impeach and to impeach
28 Hawkins, so we were entitled to have it. And
29 finally, the issue that I was trying to bring to

1 mind is the constitutional rights of the
2 Defendant. At no point can the right of a
3 privilege, of a mere civil law privilege, and
4 that's all it is, a civil law privilege. It's not
5 a criminal law privilege. It's not a
6 constitutional right. It's an evidentiary
7 privilege created by common law. At no point can a
8 privilege, a physician-patient privilege overcome a
9 constitutional right to confront one's witness.

10 And if any serious motion would have been
11 filed to cash the subpoena like that, the
12 appropriate action of the Court would have, in
13 fact, been to say to the prosecution or to Mr.
14 Hawkins or whoever the witness was, Fine; you can
15 have your privilege, but you can't testify. You
16 can't have your cake and eat it too. You can't
17 conceal part of your credibility and your state of
18 being from the witness or from the defendant that
19 you come here in court to help put to death, to
20 help get convicted and get a death sentence. You
21 can't come in here for cloak hiding your sins at
22 the same time that you try to put him to death.
23 And I think that that is clearly the law.

24 But in any event, we feel that these actions
25 and finally, we would bring out that we did make a
26 motion before this Court. A man who had been
27 believed in the first trial came in and recanted
28 his testimony. And we asked the Court to suppress
29 his statement because he said that he had been

1 placed in a cell for the purpose of getting
2 information, and he also said that what he said
3 wasn't true. The Court at that time overlooked and
4 really was very cynical toward his statement, very
5 cynical, very bothered by the fact it appeared that
6 we would even have nerve enough to bring this into
7 court. But, in fact, now it is confirmed that, in
8 fact, he was telling the truth and that, in fact,
9 not only is Hawkins now-- I mean not only is Veal
10 indicating that he was not telling the truth, but
11 Hawkins is now confirmed, as this motion shows and
12 the statement attached to it shows, that he wasn't
13 telling the truth either and that, in fact, he did
14 share with Veal the fact that the truth--

15 BY MR. HORAN: --Your Honor, I hate to object
16 in the middle, but we are getting off on
17 something. I would like again to stick to one
18 motion, and we can go on--

19 BY MR. LUMUMBA: --This is--

20 BY MR. HORAN: --with whether or not, you
21 know-- we are going to rule on this motion and get
22 into something else on another motion because we
23 are going to be here all day.

24 BY THE COURT: Well, I am here to be here
25 all--

26 BY MR. LUMUMBA: -- No, no. I am not trying
27 to--

28 BY MR. HORAN: --I object to him going off on
29 another motion on things unrelated to this

1 particular motion.

2 BY MR. LUMUMBA: Judge, the second, the last
3 two paragraphs of my motion and certainly the last
4 paragraph deal with this exact thing, and this is
5 the last thing I have to say about it is that the
6 Court, with the assistance of the prosecutor, and
7 really, we think, basically in response to the
8 prosecution's wishes, denied that motion unfairly.
9 And now Hawkins' testimony or Hawkins' statement
10 verifies that Veal was telling the truth. It is in
11 this motion which is on file and now is a matter of
12 public record.

13 Finally, what we would say is that, you know,
14 four Sheriff's deputies, and there is an
15 intimidation of witnesses who have come forward to
16 tell the truth. Immediately after the hearing or
17 the same evening of the hearing that the-- this is
18 prosecutorial misconduct, the reason why this case
19 should be dismissed. Immediately after the hearing
20 or sometime after the hearing on the evening of the
21 3rd of March, four Sheriff's deputies, three black
22 and one white, invaded the room of Mr. Veal, opened
23 his door with a key that was apparently supplied to
24 them by the person in charge of the hotel that he
25 was staying with in Greenwood, went into this
26 hotel, handcuffed him, threatened him that he was
27 going to go to jail if he didn't change his
28 testimony, and specifically were interested in him
29 saying that I had offered him something or somehow

1 forced him to change his testimony; indicated that
2 the prosecutor in this case, the District Attorney,
3 was in the process of trying to get information
4 that he could send me before the Bar.

5 That is a riveting violation of the
6 Defendant's constitutional rights. Not only does
7 it attempt to intimidate witnesses who have made
8 statements to neutralize the defense against him,
9 it possibly could have been an attack on a witness
10 who he could have decided at some point that he
11 might want to call to this stand and may, and I
12 think that the witness list which we have just
13 supplied to the State does have Mr. Veal's name on
14 it because we have, as of the last few days,
15 decided that Veal may be a witness for us. And
16 finally, it also sends a chill to the attorney and
17 intimidates the attorney, the attorney's ability to
18 function, to represent his client.

19 So all of these things we think are grievous
20 assaults on the constitutional rights of the
21 Defendant. We, as officers of the court, represent
22 to you that all these things are true. We would--
23 all these things are truly represented to us. Of
24 course, we weren't present when the officers came
25 into Mr. Veal's room, but we did get a report of
26 what happened immediately after it occurred.

27 So what we would do is move this Court to
28 dismiss this case on the basis of prosecutorial
29 misconduct. We have not been able ourselves, we

1 don't have the contact with either-- if the Court
2 wanted to delve into this with an evidentiary
3 hearing, we certainly would not shirk from it. We
4 attempted to subpoena some people to come here,
5 weren't able to get them for today. One was the
6 Whit Mounger, who I think had something to do with
7 the representation of Mr. Hawkins from what I
8 understand. It's unclear to me that he represented
9 him in a specific case that Hawkins had in
10 Greenwood. But he did represent him in a case, and
11 I think perhaps a couple of cases that were going
12 on at the same time. We are also trying to
13 subpoena-- we weren't able to subpoena either Mr.
14 Hawkins or Mr. Veal for this proceeding. The
15 Court, as it knows, set this hearing date last
16 week, but we do not back down from this motion at
17 all.

18 And if the Court does not feel that it needs
19 some further inquiry, I think that based upon the
20 record here, unless the prosecution can give
21 evidence to refute it, the Court should grant our
22 motion. If the Court is not inclined to grant it
23 on the present state of the record, we would ask
24 that the Court take it under advisement and that
25 what we would do is on the very next available day
26 bring these witnesses to court, and we could have a
27 hearing on it. That is, that is our offer.

28 **BY THE COURT:** Before you are through, I have
29 got a question or two I want to ask you. One, what

1 is it at Itta Bena that you did not get?

2 BY MR. LUMUMBA: We did not get the cocaine
3 arrest, and we did not also get the disposition of
4 the cocaine arrest. It was a sale of--

5 BY THE COURT: --Is that over and done with?

6 BY MR. LUMUMBA: We still don't have it, no.

7 BY THE COURT: Well, I mean is that case over
8 and done with?

9 BY MR. LUMUMBA: Yeah, yes.

10 BY THE COURT: Well, then--

11 BY MR. LUMUMBA: --It is remanded to the
12 files, over and done with.

13 BY THE COURT: Okay, well, you are entitled to
14 it pursuant to my order. Now you should have filed
15 something to make me force them to-- a motion to
16 compel and I will compel them to do that.

17 BY MR. LUMUMBA: Okay.

18 BY THE COURT: Okay. Now anything else over
19 there that you don't have?

20 BY MR. LUMUMBA: Of course, there would have
21 been no way for us to know that because the only
22 person that has at the last minute told us about it
23 is Hawkins. What I'm-- the point of the motion is
24 there is no way I could have known about it.

25 BY THE COURT: I understand, but the point of
26 what I'm saying is that if they did not comply with
27 my order or you didn't think they were, you should
28 have filed a motion to compel. Now is that all at
29 Itta Bena?

1 BY MR. LUMUMBA: That is all that we are aware
2 of. We don't know what else exists.

3 BY THE COURT: Okay, then that's all that I am
4 aware of too, so I can't do anything about what I
5 don't know either.

6 BY MR. LUMUMBA: Okay.

7 BY THE COURT: If you don't think it's there,
8 I will make them produce it if it's subject to my
9 order. Now I don't know what our status is in
10 relation to Hawkins' records. Are you raising
11 that?

12 BY MR. LUMUMBA: Status in relation to what?

13 BY THE COURT: Hawkins' medical records.

14 BY MR. LUMUMBA: Yes, we would like to have
15 the medical records.

16 BY MR. EVANS: Your Honor, I have some stuff I
17 would like to comment about that before we go too
18 deep into--

19 BY THE COURT: --Well, I just wanted to know
20 where I am. Okay, we will come back to that. All
21 right, Mr. Horan.

22 BY MR. HORAN: Thank you, Your Honor. As to--
23 I'm going to discuss the part of the prosecutorial
24 misconduct, I assume the part that involves me.
25 Mr. Evans is going to discuss the remainder of it
26 and some of the other issues, if that's what they
27 are, that was brought up by Mr. Lumumba.

28 I find it pretty ironic that Mr. Lumumba would
29 offer the Court to provide him protection under Box

1 and Brady considering the fact that just today we
2 have received a taped statement that they took from
3 Mr. Hawkins that I think is almost three weeks old,
4 and they have steadfastly told this Court that they
5 had no discoverable material and that they would
6 provide it immediately upon getting it.

7 And I think that brings into focus why the
8 State filed the Motion to Suppress the Subpoena-- I
9 mean to Suppress the Subpoena Duces Tecums is
10 because Counsel for the Defendant, both Counsel
11 have steadfastly violated practically every rule of
12 evidence, rules of court and during this whole
13 thing, Your Honor. That's why we filed the
14 subpoena. It wasn't because that we were scared
15 they were going to find something, that there was
16 something in his records. It's because we had no
17 confidence in their ability to follow the rules of
18 court, and when we get to trial in front of a jury
19 for them not to try to introduce inadmissible
20 evidence. That is the only reason the State--

21 BY MR. LUMUMBA: --Excuse me, Judge. I-- as
22 he is talking, I just need to say something because
23 there is a witness I don't want to get away, but
24 that shouldn't interrupt anything. He can
25 proceed. I just wanted to let you know I wasn't
26 standing up in order to disrupt the presentation.

27 **BY THE COURT:** All right, sir.

28 (Brief pause while Mr. Lumumba talks to a man
29 in the courtroom who then gets up and leaves.)

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 BY MR. LUMUMBA: Go ahead. I'm still here.

2 BY MR. HORAN: The Motion to Quash was filed
3 on all of these subpoenas primarily because, not
4 because of the substance of what may be found or
5 what it would retrieve; it was two or three
6 things. First of all, we never got notice of the
7 subpoena, which is clearly in the rules. I had to
8 request the Court to instruct Mr. Freelon to give
9 us notice on every subpoena duces tecum which is
10 required under Rule 45. They issued two yesterday;
11 we still didn't get notice.

12 The point is, Your Honor, that the reason that
13 the Motion to Quash was submitted to the Court was
14 because they are just, they are not following the
15 Court's orders, and we don't anticipate at trial
16 that they are going to change their trial tactics.
17 Their pretrial tactics and their trial tactics are
18 going to be exactly the same, and that is the
19 purpose of the subpoena duces tecum. It's not to
20 hide anything; not to be, not to keep them from
21 getting anything that would be relevant, and I
22 think the Court did and properly so grant their
23 motion in part as to the Itta Bena records and to
24 the Justice Court records in Leflore County.

25 And I did call Mr. Freelon after I talked with
26 the Court, and the Court has called me on several
27 occasions after you have discussed things with Mr.
28 Freelon over the phone. And I understand that the
29 Court has to do those type things in order to

1 administer a case of this magnitude. And if the
2 Court, if there is anything about the conversation
3 with the Court that is incorrect that I am fixing
4 to represent, you can correct me. If there is
5 anything about Mr. Freelon's conversation with me
6 that is incorrect, he can state something to the
7 contrary.

8 The conversation I had with the Court in
9 Grenada was that the Court told me, asked me
10 whether or not there was anything that we were
11 going to be able to work out between the parties as
12 to the subpoenas, and I told you I did not know. I
13 called Mr. Freelon after the Court instructed me to
14 get up with Mr. Freelon, which I did, and
15 instructed Mr. Freelon was there any way we could
16 come to some conclusion, that I thought probably
17 that some of the stuff they were requesting was
18 public record, and I thought that the Judge, that
19 the Court was not going to allow them to get stuff
20 under the law, under the existing case law that
21 happened after the fact. And I think the existing
22 case law supports me on that, and that is the only
23 representation that I made to Mr. Freelon. And at
24 that point in time he accused me, because I was
25 kind enough to call him to try to work something
26 out, he accused me of earwiggling the Court.

27 And it has been on two or three occasions,
28 Your Honor, that I have tried to get up with Mr.
29 Freelon to make their job a little bit easier,

1 easier to try this case, and there is absolutely no
2 appreciation for that fact. And if there is
3 anything about the representation that I am making
4 about our conversation, Your Honor, you can, you
5 remember. You can take judicial notice of what it
6 was, but my understanding or my recollection is
7 that that's all that took place during the course
8 of my brief conference with you.

9 And I think the Court will take notice that
10 within the last three weeks you have called me on
11 the phone and told me that you have talked with Mr.
12 Freelon on the phones about matters, administrative
13 matters, certainly nothing about any Court rulings
14 or anything like that, and I haven't voiced any
15 objection to that because I understand that a case
16 of this magnitude, that is what the Court is going
17 to have to do.

18 But I think it is very ironic that Mr. Lumumba
19 can stand up here and represent himself as an
20 officer of the court with we have got two
21 statements, a statement that they took in February
22 from Veal that they still haven't provided to us,
23 Judge. They sat up here in this courtroom and in
24 Winona and looked you square in the face and said
25 we do not have discoverable material. And we have
26 a taped statement they took in February, a month
27 prior to that, to that hearing. And now they are
28 going to stand up here and ask for protection under
29 Box and Brady. It's really offensive to me as an

1 officer of the court.

2 And all these representations that Counsel for
3 the Defendant is making about what happened at
4 Veal's residence, there is absolutely no proof of
5 that, and that's all I have. Mr. Evans has got
6 something on some of the other matters, Your
7 Honor.

8 BY MR. EVANS: Your Honor, of course, the
9 Defense did not see fit to subpoena Maurice Hawkins
10 to be here today. Instead, they want to tell the
11 Court what he would say. Maurice Hawkins called
12 us. I went to talk to him to see what the problem
13 was. He said that he had been in the hospital,
14 that the day he got out of the hospital that one of
15 the attorneys for the Defense was there at the
16 hospital to pick him up without him knowing it,
17 asked him to get in the car with him and ride with
18 him. This was Mr. Freelon; that the next thing he
19 knew they were at an apartment in Jackson, that he
20 was weak from being in the hospital; he was
21 scared. He had been intimidated, that he had been
22 told by them that they had already taken care of
23 one witness, that they had sent Veal to Atlanta,
24 and they would do the same thing for him. He
25 stated to me that they asked him about why he was
26 in the State Hospital, that he told them freely
27 that it was because he had had a drug addiction and
28 he wanted to go down there for help. They asked
29 him if he had any mental problems, and he told them

1 no.

2 As far as any records from Whitfield, he has
3 never at any time stated and he told me he has
4 never at any time stated that he had any objection
5 to them getting his records. He has never been
6 asked by them to sign a waiver of his records. He
7 could have been brought here today and asked to
8 sign a waiver of his records. It is inappropriate
9 for them to go to the hospital without at least
10 attempting to get a waiver from him and ask doctors
11 down there to release these records. It's
12 something that they could easily do if they wanted
13 to do it, but they don't. They want to come in
14 here and complain that they couldn't get something
15 the way they weren't entitled to get it.

16 Maurice Hawkins, according to what he told me,
17 was not only carried to Jackson and put in an
18 apartment that they had down there, but they
19 wouldn't bring him back. He had to call a relative
20 to come down there and pick him up because they
21 carried him down there hoping he wouldn't make it
22 back up to this part of the country.

23 If there is any inappropriate behavior, it is
24 definitely from things that they have done. They
25 have made comments about misappropriation or
26 misconduct, prosecutorial misconduct. Any deals
27 that they are alleging to have been made are flat
28 lies. They are not true. Whoever told them these
29 things, they are not true, if anyone told them

1 these things. Apparently from the motions that
2 they are filing, there is a complete disregard for
3 the truth anyway because most of the motions that
4 they have filed lately, when I have tried to go and
5 check on the motions, I have found out that they
6 just flat misrepresented facts to the Court;
7 motions such as the one that they have filed where
8 they were claiming there had been no black or
9 female jury foreman in our district. That is just
10 a flat misrepresentation of the facts, and it
11 appears that every motion that they are going to
12 file is just a complete disregard for the truth.

13 BY MR. LUMUMBA: Judge, I have a short
14 rejoinder. It would seem that we have joined
15 forces here in that since he has just recently
16 talked to Maurice Hawkins, he should be in a
17 position where he could bring him here, and what we
18 need to do is put Maurice Hawkins on the stand.

19 BY MR. EVANS: This is not our motion, Your
20 Honor.

21 BY MR. LUMUMBA: But we don't have access to
22 Mr. Hawkins. We don't have a way to bring him
23 here. Okay, could I finish my--

24 BY MR. EVANS: --They have subpoena powers.

25 BY MR. LUMUMBA: If we could find him, yes.
26 But we have not been able to find Mr. Hawkins since
27 the time that the date has been set for this
28 hearing, and if they want to come here and tell
29 this fairy tale about somebody going out to the

1 hospital and picking him up and taking him away in
2 a weakened condition, that is fine with us. We are
3 ready, we are willing and ready for that if that's
4 the kind of testimony we want to put before this
5 Court or anybody else. That is fine with us.

6 **BY THE COURT:** That didn't happen, I guess?

7 **BY MR. LUMUMBA:** Of course not. No, it did
8 not. Let me-- if the Court wants to know what
9 happened--

10 **BY MR. EVANS:** --Your Honor, I would ask if
11 somebody is going to tell what happened, that it
12 would be the attorney that carried him.

13 **BY MR. LUMUMBA:** Okay.

14 **BY THE COURT:** That is okay. He has answered
15 my question.

16 **BY MR. LUMUMBA:** What happened is that Mr.
17 Hawkins approached Mr. Freelon in the presence of
18 others, and if there is a problem with it, we will
19 be able to establish that. He approached Mr.
20 Freelon, asked to talk to Mr. Freelon, and at that
21 point it was a series of events that led to him
22 getting, us getting a statement from him. Mr.
23 Hawkins has never been taken anywhere against his
24 will. That is an absolute fabrication. But
25 anyway, I see we don't have a statement on that.
26 But anyway, we seem to be getting off the issue
27 here.

28 Mr. Hawkins is the issue. So if he can be
29 produced, we would ask the Court for an opportunity

1 to produce him next week, and since the DA is in
2 touch with him, if he can give us where we can find
3 him at, we will subpoena him, and maybe we can just
4 have a hearing next week. If the Court, I mean we
5 prefer to have it somewhere down lower like Winona
6 or some place like that where we wouldn't have to
7 come so far, but whatever the Court chooses.

8 Now the second thing, let me just simply say
9 this, just to rebut some of the things. The
10 prosecutor really hasn't answered my motion, but I
11 will rebut the things he did say.
12 Discovery violations: They have had anything that
13 we have had as soon as we have determined that the
14 persons that have given it to us may be witnesses.
15 The order that you issued tracks the rule. The
16 rule says that anyone who may be a witness for you,
17 then you are-- in chief, then you should give up
18 the information about any statement they have
19 made. We are not required to give up any statement
20 as soon as we take it. We have to take statements
21 and take other statements and look into other
22 things in order to determine whether someone may be
23 a witness for us. And as soon as we find out that
24 they may be a witness, then as reasonably as, as
25 soon as possible after that, we supply statements.

26 But we do want to say a few things about
27 discovery before the day is over about tapes which
28 have not been supplied to us and things of that
29 nature. So we will talk about that, but as far as

1 discovery violations, there are none on our
2 behalf. As soon as we have determined that a
3 person may be a witness for us, if we had a
4 statement from him, we have supplied it, and we
5 will continue to do so.

6 You know, the Court may remember that both
7 Maurice Hawkins and Veal were witnesses for the
8 State in the last trial. Those people generally
9 aren't prime candidates to be defense witnesses,
10 and only after intensive consideration would any
11 defense counsel make a decision that a witness like
12 that may testify for them. I don't know how Mr.
13 Prosecutor tries cases, but I know how responsible
14 people try them, and responsible people who are
15 attorneys don't just jump out there and assume that
16 a person is going to be a witness or even may be a
17 witness. You have to check that out. Of course,
18 the Court is kind of smirking or smiling up there,
19 but the truth, that's what I know about it, Judge.
20 That's what I know about it.

21 But in any event, that is our motion. We
22 would like to have the discovery items. We would
23 like to have the medical records. If we had Mr.
24 Hawkins in a position where he could sign a medical
25 release for us, if he is willing to do that, and we
26 certainly-- he did, he did seem to be willing. But
27 at the point in time that we talked to Mr. Hawkins
28 when he told us about these medical records
29 existing, which is the first time we knew that they

1 existed since the State had done its best to stop
2 us from seeing them, we were not in a position
3 where we could have him sign anything. We wasn't
4 in a place, we wasn't in our office. We didn't
5 have a form. There was no way we could have him
6 sign anything.

7 So anyway, that is our representation. We
8 would ask that the case be dismissed or that-- and
9 we would ask that the Court respectfully recuse
10 itself from any further proceedings, and we would
11 ask that in the alternative, that the prosecution
12 recuse itself.

13 **BY THE COURT:** Okay, on the first regard, let
14 me say this. Both sides during the entire length
15 of this case have called the Court and had
16 conversations with the Court which were ex parte.
17 All of those were conversations dealing with the
18 administration of the case just like Mr. Lumumba
19 called me about getting his expert 45 days late,
20 and I have talked to him about doing that. And
21 then I have talked to the others about the
22 administration in the case, so I have had ex parte
23 communications in relation to the administration of
24 this case. I have had no ex parte communications
25 regarding substantive matters in this case.

26 In particular, the conversation concerning the
27 subpoena or the motion to quash the subpoena to the
28 City of Itta Bena, I was in Grenada when those
29 things came about, when the subpoenas were issued

1 and when the motions were filed. Mr. Horan was
2 present in court. I directed him to talk to Mr.
3 Freelon to see if there was some way that they
4 could reach an accommodation so that the Defendant
5 could get those records and we would not have to
6 have a hearing on it. My understanding from Mr.
7 Horan is that he did call Mr. Freelon, and that
8 didn't work so I issued an order. The order
9 granted, allowed the Defendant to have the records
10 that he sought.

11 The only thing was that the subpoena was
12 incorrectly filed. It did not follow the rules,
13 and it required that the person subpoenaed produce
14 those records at a county outside their residence
15 which clearly is not allowed by the rules. So the
16 limitation in the subpoenas and in the Court's
17 order was that they could have the records, but
18 they would have to get them at the, in the county
19 in which the records existed.

20 If there was, if there are records that have
21 not been produced by the Itta Bena Police
22 Department pursuant to my order or in contradiction
23 of my order, none of that has been brought to my
24 attention before today. The fact is after the
25 hearing we have just had, I don't know of any
26 records that they have not supplied that I-- but if
27 there are some, I will see that they get, that they
28 are supplied consistent with my order.

29 So the motion for me to recuse myself is

1 overruled.

2 The questions about prosecutorial misconduct
3 are all allegations based in the motion. They are
4 not substantiated by any proof before this Court,
5 independent proof. They are merely allegations
6 made by Counsel for the Defendant. And therefore,
7 there is no basis for that Motion, and that Motion
8 is overruled.

9 I have done some reflection on the question of
10 Maurice Hawkins and the privilege and in light of
11 what Mr. Evans says here today. Mr. Hawkins has to
12 claim that privilege. It is a privilege that he
13 has to claim, and therefore, he is not here to
14 claim it. I think it is probably not appropriate
15 that he not have notice to be here by somebody, but
16 he is not here. And it's a privilege that he can
17 claim or his doctor can claim, and neither one of
18 them are here.

19 So the Motion to Quash that subpoena is
20 denied, but those people will not be required to
21 produce that outside the county of their
22 residence. Mr. Lumumba, if you will get me an
23 order quickly in that regard, I will get that
24 signed and executed to you so you can get those
25 records as quickly as possible.

26 BY MR. LUMUMBA: Great.

27 **BY THE COURT:** Now the question of whether
28 that is relevant evidence is something that will
29 have to be determined later at a 403 hearing or

1 such other hearing as the Court has to have
2 consistent with the rules. But I have reviewed the
3 law on this particular point, and I think, it is
4 just clear to me that Mr. Hawkins is the only one
5 that can claim the privilege. So if you will
6 furnish me that order.

7 BY MR. LUMUMBA: Certainly. Judge, let me
8 just make-- in addition to my Motion to Recusal,
9 you just raised an issue which should be included,
10 and I am glad you raised it. We did have ex parte
11 conversations about my expert. In fact, I filed a
12 motion for ex parte, the right to make ex parte
13 application for expert assistance and expert
14 assistance, and you granted that motion. In fact--
15 in part. You granted it to the extent that we
16 dealt, and in chambers you actually denied some
17 things I asked for and you granted some things.
18 And when it was appropriate under that motion is
19 for us to continue our colloquy about the expert.
20 The Court went outside that motion and outside its
21 own ruling which it had previously made and
22 violated my client's rights again when it did
23 this. What it did is it talked directly to the
24 expert itself which I think may be appropriate--
25 inappropriate, but whether it was or not, I'm not
26 sure.

27 But what I know is inappropriate is when the
28 Court ordered me and the expert, without any kind
29 of hearing or anything, to furnish a copy of his

1 report to the prosecution. I am not required to
2 give all expert reports to the prosecution. The
3 Defendant is not required to do so. The only
4 expert report that we are required to give to
5 anybody is an expert report that we intend to use,
6 from a witness we intend to use. We cannot present
7 a witness and withhold his report. We can, in
8 fact-- we can, in fact, have many experts. If we
9 can hire ten experts, we are not required to
10 present all their reports. That's not true in
11 civil law; it's not true in criminal law, not here
12 in the State of Mississippi.

13 So and, in fact, if you look at the rule, the
14 rule as it relates to the State, this is a point
15 that becomes a little bit different than where it
16 relates to the Defendant. In the discovery rule
17 for the State, it says that they must produce
18 physical evidence which they gather in the trial,
19 and I think it also says the same thing about
20 scientific evidence. For the defense, it says they
21 must produce evidence that they may use. Now we
22 can't tell whether we are going to use it or not
23 until we have a chance to see what it is, and
24 before the report was even written, the Court
25 ordered that that report be provided to the
26 prosecution.

27 I think that severely compromised my client's
28 rights and it may have actually even been
29 prejudicial, so I would raise that as part of the

1 Motion to Recuse. I am sure we will revisit that
2 issue at a later time on the issue of whether or
3 not some testimony should be excluded based upon
4 the furnishing of that report.

5 But I just wanted to bring that to the Court's
6 attention. So I would ask for a reconsideration
7 based upon that late entry that I just made to my
8 motion.

9 **BY THE COURT:** Okay, in the first place the
10 Court did not appoint the Defendant an expert
11 witness. That did not happen. What the Court did
12 was appoint an independent expert to analyze the
13 evidence pursuant to Rule 706, and it is quite
14 clear in Rule 706 that the Court has an obligation
15 and a duty to direct, to tell that expert what his
16 duties and obligations are, which the Court did by
17 written order and then did verbally. The Rule is
18 quite clear I could do that.

19 The second thing in that Rule it requires that
20 those, that whatever he finds be produced to both
21 parties and the Court and everybody is subject to
22 taking depositions and cross-examination and
23 everything. He is nobody's witness. He is not
24 your witness. He is a court-appointed witness, and
25 those things are just not-- your objection is just
26 not within the rules. So that is overruled.

27 **BY MR. LUMUMBA:** Okay, I understand, Judge.
28 But what I understand now but I didn't understand
29 before, so perhaps I am imposing the wrong

1 objection. My objection at this point, since the
2 Court has discussed it in full court rather than ex
3 parte, is the Court denying me an expert which it,
4 in fact, recognizes that I needed, and we were
5 entitled to an expert under the law. We were not
6 just entitled to an independent person to come in
7 and look at the evidence. We were entitled to an
8 expert, and if you did not give us an expert, then
9 it is my contention that you violated the
10 Defendant's rights by doing so.

11 **BY THE COURT:** Mr. Lumumba, I am not required
12 by any law of any case, of any statute that ever
13 happened in this country to produce a witness to
14 testify for your client. That is just, you are not
15 entitled to that. You are entitled to an expert
16 who is an independent expert. If he is not an
17 independent expert, he is probably not qualified to
18 testify.

19 **BY MR. LUMUMBA:** No.

20 **BY THE COURT:** Anyhow, we have addressed that
21 and I have overruled it. Let's move on to the next
22 motion.

23 **BY MR. LUMUMBA:** I think that is easily
24 understood that since they have their own experts,
25 we are entitled to our experts. But since the
26 Court doesn't understand that, the next motion is
27 this. We make a motion to change venue, and we
28 have supplied the Court with some documentation on
29 that as well as the other side. We would call at

1 this time in support of that Motion Mr. Robert
2 Brand. Robert Brand.

3 **BY THE COURT:** Is Ms. Minnie Leeper here?

4 BY THE CLERK: She is here to testify.

5 **BY THE COURT:** Oh, okay. All right.

6 BY MR. LUMUMBA: If the-- do you want me to
7 proceed with my testimony first, or were you asking
8 the State to proceed first?

9 **BY THE COURT:** Well, are you going to testify?

10 BY MR. LUMUMBA: No, I'm not going to testify.
11 I have a witness that is coming.

12 **BY THE COURT:** Why don't we take the witnesses
13 first?

14 BY MR. LUMUMBA: Okay.

15 (DOCUMENTS WERE HANDED TO STATE'S COUNSEL AND
16 THEN TO THE COURT REPORTER.)

17 (COPIES OF FIVE NEWSPAPER ARTICLES WERE MARKED
18 AS DEFENDANT'S EXHIBIT "A" TO THE MOTION FOR CHANGE
19 OF VENUE, AND NUMEROUS SHEETS CONTAINING THE SCRIPT
20 OR TEXT FROM TELEVISION NEWS REPORTS CONCERNING THE
21 FLOWERS CASE WERE MARKED AS DEFENDANT'S EXHIBIT "B"
22 TO THE SAME MOTION.)

23 BY MR. LUMUMBA: I'm going to have to call
24 another witness because that witness is not here
25 yet.

26 **BY THE COURT:** All right.

27 BY MR. LUMUMBA: I would call Ishmael
28 Muhammad.

29 **BY THE COURT:** Mr. Muhammad, come up here and

1 be sworn, please.

2 (MR. ISHMAEL MUHAMMAD WAS SWORN BY THE CLERK.)

3 **BY THE COURT:** Have a seat over here, please,
4 sir.

5 (Witness takes the stand, and another man
6 walks into the courtroom.)

7 BY MR. LUMUMBA: Oh, Judge, I'm sorry. I'm
8 going to have to--

9 **BY THE COURT:** Do you want to switch?

10 BY MR. LUMUMBA: Yeah, I want to switch
11 because this witness has to leave, and I know he
12 has got to go.

13 **BY THE COURT:** Okay.

14 BY MR. LUMUMBA: I would call Robert Brand.

15 **BY THE COURT:** Mr. Muhammad, if you could step
16 out, we will call you back in just a minute.

17 (MR. ROBERT BRAND WAS SWORN BY THE CLERK.)

18 **BY THE COURT:** Have a seat up here, please,
19 sir.

20 **ROBERT BRAND,**

21 a black male being called to testify by the Defendant on his
22 Motion for Change of Venue, having first been duly sworn,
23 testified as follows, to-wit:

24 **BY THE COURT:** State your name for the
25 record.

26 BY THE WITNESS: Robert Brand.

27 DIRECT EXAMINATION BY MR. LUMUMBA:

28 Q. Okay, Witness, could you tell us-- your name is Mr.
29 Brand. Could you share with us, please, where you reside? I

1 mean what county do you reside in?

2 A. Lee. Lee County.

3 Q. And how long have you been a resident of Lee
4 County?

5 A. About 24 years.

6 Q. Okay, and do you know a number of people in Lee
7 County?

8 A. Yes, sir.

9 Q. Do you know people in Tupelo as well as in other
10 parts of--

11 A. --I used to work up here.

12 Q. Okay. Now Mr. Brand, do you have relatives and
13 friends in Lee County?

14 A. Uh-huh, yeah.

15 Q. Were you, in fact, born here?

16 A. No, I was born in Chickasaw County.

17 Q. Chickasaw County, okay. Now I want to ask you, Mr.
18 Brand, when you were employed, what kind of work did you do?

19 A. Laborer.

20 Q. Laborer?

21 A. Yeah.

22 Q. And you are disabled at this time; is that correct?

23 A. Yes, sir.

24 Q. Okay. Mr. Brand, I want you to share with me,
25 please, if you are aware of the case of Curtis Flowers, State
26 versus Curtis Flowers, which was tried in this county back in
27 October of 1997?

28 A. Yes, sir.

29 Q. Okay. And are you familiar with whether or not

1 there was any publicity on that case?

2 A. Yes, sir.

3 Q. And did the publicity, was there any newspaper
4 publicity?

5 A. Yes, sir.

6 Q. Was there also publicity in terms of TV?

7 A. Yes.

8 Q. Okay. Now Mr. Brand, I would like to ask you if
9 you are familiar with the papers which are here in this
10 county, and if you are, could you share with me what papers
11 are printed in Lee County that you are aware of or which
12 papers serve Lee County?

13 A. Serve Lee County?

14 Q. Uh-hum.

15 A. Clarion Ledger, Daily Journal is from Tupelo here;
16 the Clarion Ledger, the USA Today, and Commercial Appeal. I
17 know of that many at least.

18 Q. Okay. And did all these papers cover information
19 on the case?

20 A. All the ones that I read. I assume all of them
21 did.

22 Q. Okay, and did they cover information on the
23 conviction and the sentence of death?

24 A. Yes, sir.

25 Q. Okay. Were you aware of the fact that Mr. Flowers
26 had been sentenced to death in this very matter?

27 A. Yes, sir.

28 Q. Okay, have you, are you aware of what the, of
29 whether or not your friends and the people that you have

1 talked or heard talk about this case, do they know that this
2 case has taken place and that he was sentenced to death?

3 A. Yeah, I guess.

4 Q. I'm sorry?

5 A. Yes, sir.

6 Q. Have you heard people discuss the case and talk
7 about the case?

8 A. It was discussed when it was going on, you know,
9 quite a few people.

10 Q. Okay, based upon what you have heard, do you feel
11 that Mr. Flowers could get a fair trial in this county?

12 A. Um, now I don't know.

13 Q. Do you feel he could get a fair trial?

14 A. Not here because of one of the reasons I believe it
15 will be the publicity.

16 Q. Publicity, okay.

17 A. And a lot of people-- this is just my speculation.

18 Q. Okay, do you believe people are aware of the fact
19 that he was found guilty and sentenced to death?

20 A. I think so; yes, sir.

21 Q. Okay, and would that be a reason why you don't
22 think he could get a fair trial?

23 A. That would be one of the more reasons, yeah.

24 Q. Now the Judge just-- you know, it is very
25 important, Mr. Brand, that the Judge gets your, your, the
26 view that you-- do you remember we discussed this before?

27 A. Uh-hum, yeah.

28 Q. And did you tell me that you felt that he could not
29 get a fair trial?

1 A. Yes, sir.

2 Q. Pardon?

3 A. Yes, sir.

4 Q. Okay. And do you have a firm belief in that?

5 A. I have a firm belief in that.

6 Q. And is that based upon the information that you
7 have seen distributed in the paper and on TV?

8 A. That and there is others, yeah. Yes, I do.

9 Q. That and what?

10 A. I said that would be the most important evidence.

11 Q. Yeah, and the fact that you have heard people talk
12 about the case?

13 A. True.

14 BY MR. LUMUMBA: I have no further questions
15 of Mr. Brand at this time, Judge.

16 BY THE COURT: Mr. Evans.

17 BY MR. EVANS: One minute, Your Honor.

18 BY MR. LUMUMBA: While they are waiting on
19 that, Mr. Brand, there is another question I would
20 like to ask you.

21 FURTHER DIRECT EXAMINATION BY MR. LUMUMBA:

22 Q. Do you believe that based upon the publicity and
23 the conversations that you have, that there is a deep
24 prejudice or prejudgment of the Defendant already in this
25 case?

26 A. Yes, sir.

27 Q. And that it's a deep abiding bias that would
28 prevent him from getting a trial?

29 A. I would think so.

1 Q. Okay, a fair trial.

2 BY MR. LUMUMBA: I have no further questions.

3 CROSS-EXAMINATION BY MR. EVANS:

4 Q. Mr. Brand, you initially said you didn't know
5 whether he could get a fair trial here or not; is that right?

6 A. No, sir.

7 Q. But when opposing counsel asked you a direct
8 question about that, you agreed with him, didn't you?

9 A. No, I don't think I did.

10 Q. What part of the county do you live in?

11 A. Lee.

12 Q. What part of Lee County?

13 A. South.

14 Q. In what community? What community?

15 A. Shannon.

16 Q. And you say the only conversations that you have
17 heard anybody talking about this were back when it was being
18 tried what, about a year ago?

19 A. Being tried and after and everybody commenting
20 about the case.

21 Q. And who commented about it then?

22 A. Any number of people.

23 Q. Give me a name.

24 A. Walter Stanphill. That would be the most that I
25 heard.

26 BY MR. EVANS: No further questions.

27 REDIRECT EXAMINATION BY MR. LUMUMBA:

28 Q. Even though you can't fix at the time that these
29 people were making comments, did you know that you were going

1 to be called here to testify about it?

2 A. No.

3 Q. So did you have any reason to try to memorize
4 people's names?

5 A. No.

6 Q. Okay, just the same, even though you can't place a
7 name right now on everybody that commented, did you, in fact,
8 hear from people, and did they comment?

9 A. Yes, sir.

10 Q. And were they biased against the case?

11 A. I would say yes.

12 BY MR. LUMUMBA: Okay. I have no further
13 questions for this witness.

14 BY THE COURT: Is he finally excused?

15 BY MR. LUMUMBA: For me, yes.

16 BY THE COURT: Y'all don't want him, do you?

17 BY MR. EVANS: No, sir.

18 BY THE COURT: You are free to go, sir.

19 WITNESS EXCUSED.

20 BY THE COURT: Now do you want to call Mr.
21 Muhammed?

22 BY MR. LUMUMBA: Yes, I do, Judge, but before
23 I do, I want to bring to the Court's attention
24 exhibits which are already attached to my motion,
25 and I have had a couple of sets of exhibits. This
26 is so the Court can be aware of these. We filed--
27 and these are all on file. The first exhibits we
28 have are Exhibits in Support of Motion for Change
29 of Venue.

1 **BY THE COURT:** That is all those newspaper
2 articles that you sent me?

3 BY MR. LUMUMBA: Yes, sir.

4 **BY THE COURT:** Do you want to get them
5 admitted?

6 BY MR. LUMUMBA: Yes, sir.

7 **BY THE COURT:** Have y'all got any objection to
8 that?

9 BY MR. HORAN: Your Honor, I don't have any
10 objection to them. I think they are in the file,
11 are they not?

12 **BY THE COURT:** Well, I'm going to make this
13 suggestion to you. I would like them to be marked
14 individually item by item so that when we talk
15 about them, we can identify them. And if y'all
16 don't have any objection to them, then, Mr.
17 Lumumba, I'm going to get you to get with the Court
18 Reporter right now and y'all mark them. We will
19 take about 5 minutes while y'all are doing that.

20 (DURING A BRIEF RECESS, COPIES OF NUMEROUS
21 NEWSPAPER ARTICLES WERE MARKED COLLECTIVELY AS
22 DEFENDANT'S EXHIBIT C TO THE MOTION FOR CHANGE OF
23 VENUE, AND COPIES OF NEWSPAPER ARTICLES UNDER THE
24 COVER SHEET ENTITLED SECOND SET OF EXHIBITS IN
25 SUPPORT OF MOTION WERE MARKED COLLECTIVELY AS
26 DEFENDANT'S EXHIBIT D TO THE SAME MOTION.)

27 (UPON THE COURT RETURNING TO THE COURTROOM AND
28 WITH ALL COUNSEL AND THE DEFENDANT PRESENT,
29 PROCEEDINGS CONTINUED AS FOLLOWS:)

1 **BY THE COURT:** Are you going to take that
2 witness out of order now?

3 BY MR. HORAN: Yes, sir. Mr. Lumumba has
4 allowed me. I assume they are going to have at
5 least one more witness that would raise a prima
6 facie showing that they would meet their burden.
7 Therefore-- I assume they are.

8 BY MR. LUMUMBA: Yes, we have another
9 witness. And Judge, I don't have an objection. He
10 wants to call out of turn a witness. I will allow
11 him to do that.

12 BY MR. HORAN: Thank you. I appreciate it.

13 BY MR. LUMUMBA: All right.

14 BY MR. HORAN: Ms. Minnie Leeper.

15 **MINNIE LEEPER,**
16 a black female called to testify out of turn as a witness for
17 the State of Mississippi in opposition to the Defendant's
18 Motion for Change of Venue, having first been duly sworn,
19 testified as follows, to-wit:

20 **BY THE COURT:** Ms. Leeper, if you will come
21 around here and have a seat over here. State your
22 name for the record, please.

23 BY THE WITNESS: My name is Minnie Leeper.

24 BY MR. HORAN: May I proceed, Your Honor?

25 BY THE COURT REPORTER: Spell your last name,
26 please.

27 BY THE WITNESS: L E E P E R.

28 DIRECT EXAMINATION BY MR. HORAN:

29 Q. Ms. Leeper, where do you reside?

1 A. I live in-- Box 3201, Leeper Street, Nettleton.

2 Q. Nettleton, Mississippi?

3 A. Mississippi.

4 Q. Is that a community here in Lee County?

5 A. Yes, it is; about 14 miles.

6 Q. How big is Nettleton?

7 A. We have a population about 2,165 people.

8 Q. Do you consider yourself active in the community
9 there at Nettleton?

10 A. Yes.

11 Q. And also are you also active in Lee County as a
12 whole?

13 A. Yes, I am.

14 Q. Now I discussed with you earlier whether or not you
15 are familiar with the fact that there was a case here in Lee
16 County involving an individual by the name of Curtis Flowers,
17 and you said you were familiar with that case?

18 A. I read it in the paper.

19 Q. Okay, you read it in the paper. And you at one
20 point in time even lived in Winona; is that right?

21 A. I did.

22 Q. Some time ago?

23 A. In 1959 to '65.

24 Q. Now is this a case, this case was versus Mr.
25 Flowers. Is it a case that in the Nettleton community that
26 people discuss on a regular basis?

27 A. I haven't heard anything more about it since it
28 came out in the paper last time.

29 Q. Last time; that was some, almost a year ago?

1 A. I guess. You hear everything else. I never heard,
2 only that.

3 Q. Is it a case in which people that you see in your
4 community discuss on a regular basis?

5 A. No, I don't.

6 Q. And in Lee County in general when you come to town,
7 do people discuss it?

8 A. No.

9 Q. Have you read anything about it in the paper within
10 the last three months?

11 A. I don't remember reading anything about it. I
12 really don't.

13 Q. Do you feel like that the citizens of Lee County
14 would be willing and able and could give the Defendant Curtis
15 Flowers a fair and impartial trial here in Lee County?

16 A. I do.

17 BY MR. HORAN: I tender the witness.

18 BY MR. LUMUMBA: Thank you.

19 CROSS-EXAMINATION BY MR. LUMUMBA:

20 Q. Hi. Ms. Leeper, is it?

21 A. Good morning.

22 Q. Okay, Ms. Leeper, you indicated that you are active
23 in the county; is that right?

24 A. I am, sir.

25 Q. So I would assume that you are familiar with other
26 people who are very active in the county; is that right?

27 A. Well, I go around a lot of places; yes, sir.

28 Q. Okay, well, you certainly know who Lillie Bell,
29 L.B. Or Lillie Bell Johnson is that lives in Shannon?

1 A. I do.

2 Q. She is very active in the county?

3 A. Right.

4 Q. You have never discussed this case with her?

5 A. No, sir.

6 Q. So you are not aware of the fact that Lillie Bell
7 Johnson says that there is no way that this case could be
8 tried fairly in the county?

9 BY MR. HORAN: Your Honor, that is an improper
10 question--

11 BY THE WITNESS: --Repeat your question, sir.

12 BY MR. LUMUMBA: --No--

13 BY THE COURT: No, ma'am. The objection is
14 sustained.

15 BY THE WITNESS: What did you say now?

16 BY THE COURT: Wait a minute. You don't
17 answer until I tell you you can.

18 BY MR. LUMUMBA: Okay, now Judge, let me
19 just-- I think I have a right to respond to the
20 objection one second. This, and when you are
21 talking about hearsay, basically the substance of
22 the testimony on behalf of all witnesses who
23 testify on this is about what they know or what
24 they don't know. Just like when someone puts a
25 witness on as a character witness and they testify
26 to reputation based upon what other people say,
27 then the cross-examiner can come back and ask if
28 they know this that someone has said bad about a
29 person or good about a person. And that is the

1 same situation we are in here. We are not in the
2 normal hearsay situation, so I think in order to
3 examine whether this witness is really familiar
4 with the community opinion, I am able to ask these
5 questions.

6 **BY THE COURT:** The way you asked that question
7 you are not. That objection is sustained.

8 BY MR. LUMUMBA:

9 Q. Okay. Ms. Lillie Bell Johnson is very active in
10 the community and has been for a long time; right?

11 A. Right.

12 Q. Right. And in fact, she has been in a number of
13 different civic affairs. She doesn't live in Tupelo, does
14 she?

15 A. No, sir.

16 Q. Okay, she lives outside of Tupelo in a small
17 community herself; right?

18 A. Yes, sir.

19 Q. Is that correct?

20 A. I live outside of Tupelo?

21 Q. Yes, that she lives outside of Tupelo--

22 A. --right--

23 Q. --in a small community; right?

24 A. Yes, sir.

25 Q. But she is in Tupelo a lot?

26 A. Right.

27 Q. And she is around the county a lot; right?

28 A. Uh-hum.

29 Q. But you don't know her opinion; right?

1 A. I really don't, sir.

2 Q. And in fact, you don't remember Ms. Johnson ever
3 saying, or you don't know that Mr. Johnson has ever said
4 there is no way there could be a fair trial here in Tupelo?

5 A. Not to me.

6 Q. Okay, I see. Well, Walter Stanphill. You know
7 Walter Stanphill; right?

8 A. I have heard of him.

9 Q. He is very well known for his work that he has done
10 in the civil rights movement for a number of years; right?

11 A. Yes, sir.

12 Q. And used to work with the United League of
13 Mississippi; right?

14 A. Yes, sir.

15 Q. Used to work with the North Mississippi Rural Legal
16 services doing work for poor people; right?

17 A. Right.

18 Q. Been real active in the community?

19 A. (Witness nods her head.)

20 Q. He talks to people all the time; right?

21 A. Yes, sir; I suppose so.

22 Q. Uh-huh. He would be one of the people that would
23 be aware of what people think about in this county; right?

24 A. I imagine so. If he gets around here, and I am
25 sure he would if he heard it.

26 Q. So you don't know what he thinks about the case, do
27 you?

28 A. I really don't.

29 Q. You are not aware that he stated that the--

1 BY MR. HORAN: --Your Honor, this is not
2 proper--

3 BY MR. LUMUMBA: --county cannot be fair?--

4 BY MR. EVANS: --This is not proper what other
5 people think--

6 BY THE COURT: --Sustained.

7 BY MR. LUMUMBA: --Well, it's--

8 BY MR. EVANS: It's not proper. We object.

9 BY MR. LUMUMBA: We will make a record of my
10 exception to that ruling, Judge. It's clearly a
11 violation of what this hearing is all about.

12 BY THE COURT: Well, that objection is
13 sustained.

14 BY MR. LUMUMBA:

15 Q. Okay. Earline Gardner. You know Earline Gardner,
16 don't you?

17 A. No.

18 Q. You don't know Earline Gardner?

19 A. I don't think so.

20 Q. You are active in the community?

21 A. Earline Gardner?

22 Q. Yes.

23 A. Yes, sir. I have heard of her.

24 Q. Yeah, because if you active in the black community,
25 you have got to know Earline Gardner; isn't that right?

26 A. I have heard of her; yes, sir.

27 Q. Okay, all right, and she is here in Tupelo or not
28 in Tupelo, but she is in Guntown; is that correct?

29 A. I think so.

Q. And she knows what people think in the community;
right?

BY MR. EVANS: Your Honor, again I object. The question of this witness, the only question that he can ask her is what she bases her opinion on. He cannot ask her what other people in the community think. They would have to testify to those facts.

BY THE COURT: She can only testify to what she shows.

BY THE WITNESS:

A. I don't know what they know.

Q. Do you know that Earline Gardner has made statements about the fairness of the people in the community on this case?

A. Would you rephrase your statement, please, sir?

Q. Do you know that Earline Gardner has made statements as to whether people can be fair?

A. I don't know if that she made a statement; I really don't if that's your question.

Q. All right. So she has never told you that the people in the county can be fair?

A. No, she hasn't.

Q. All right. In fact, you are not aware of the fact that she says people can't be fair?

BY MR. EVANS: Your Honor, again that is the same objection--

BY THE WITNESS: --I don't know--

BY THE COURT: --Sustained, Mr. Lumumba--

1 BY MR. EVANS: --This whole line of questioning
2 is improper, and he knows it's improper.

3 BY THE COURT: Sustained.

4 BY MR. LUMUMBA: No--

5 BY MR. EVANS: --And the Court has already
6 ruled on it about four times.

7 BY MR. LUMUMBA: Just, just to be clear, I
8 know it's absolutely proper. It's an insane
9 proposition; kindergarten law would tell you that
10 when you are talking about opinions and people in
11 the community and you are cross-examining a
12 witness, you can cross-examine that witness as to
13 what she knows and what she does not know.

14 BY THE COURT: But that is not what you are
15 asking her. You are testifying as to what folks
16 haven't testified to here.

17 BY MR. LUMUMBA: Well, it does not--

18 BY THE COURT: You are trying to put words in
19 her mouth, and you cannot do that, and the
20 objection is sustained.

21 BY MR. LUMUMBA: No, I am not trying to put
22 words in her mouth. In fact, I know that if she
23 comes in here with the testimony she has, it's
24 obvious that she hasn't heard these people make
25 these statements which has something to do with her
26 credibility as a person that knows the opinion of
27 people in the community.

28 BY THE COURT: The objection is sustained.
29 Move on.

1 BY MR. LUMUMBA:

2 Q. Are you familiar with attorney Brian Neely?

3 A. Brian Neely. I know Brian.

4 Q. Have you talked--

5 A. --I know of Brian. No, sir. I haven't.

6 Q. He is an attorney that serves the community; right?

7 A. Right. I haven't talked to Brian Neely.

8 Q. So you don't know what he thinks about it?

9 A. I really don't.

10 Q. So you don't know that he said they can't be fair?

11 A. I really don't know that.

12 Q. Okay. Attorney Kenny Mayfield--

13 BY MR. EVANS: Your Honor, I object to this
14 entire line of questioning. This is improper--

15 BY THE WITNESS: -- Well, I don't know what
16 these people know--

17 BY MR. EVANS: --There is absolutely no reason
18 for this irrelevant conduct to continue.

19 BY THE COURT: I have sustained the objection.

20 BY MR. LUMUMBA: Okay. Well, you sustained
21 the objection to whether she knows Kenny Mayfield?

22 BY THE COURT: No.

23 BY MR. LUMUMBA:

24 Q. Okay, do you know Kenny Mayfield?

25 A. Yes, sir. I know of Kenny Mayfield.

26 Q. And have you talked to him about the case?

27 A. No, sir; I haven't.

28 Q. So you don't know what his opinion is?

29 A. I really don't.

1 Q. Well, who have you talked to that said they could
2 be fair?

3 BY MR. EVANS: That is not the question for
4 this type of motion.

5 BY MR. LUMUMBA: That is exactly what he asked
6 my witness.

7 BY MR. EVANS: No, sir.

8 BY MR. LUMUMBA: --That's exactly what he
9 asked my witness--

10 BY MR. EVANS: The question is, is there so
11 much comment in the community that he could not get
12 a fair trial. To the contrary, he has proven our
13 side of it because if there is not these contacts
14 out there, then that is proof that he can get a
15 fair trial here, that there has not been undue
16 publicity.

17 BY MR. LUMUMBA: Didn't I just hear him ask my
18 witness if someone had told him he couldn't get a
19 fair trial, and he said Walter Stanphill, which is
20 in this case in evidence, in fact.

21 BY MR. EVANS: But that was something he was
22 told. You can't ask who didn't tell you this.

23 BY MR. LUMUMBA: No, no. I am just, my
24 question at this point is, my question at this
25 point is who told her that the county could be
26 fair--

27 BY MR. EVANS: That was her opinion, Your
28 Honor.

29 BY THE COURT: I'm going to let her answer.

1 BY MR. LUMUMBA:

2 Q. Who told you the county could be fair?

3 A. Haven't anybody told me. That's my opinion of the
4 case.

5 Q. Oh, I see; I see; I see; uh-hum. Okay, we are
6 going to get into your opinion in a minute. Now Betty
7 Johnson, do you know her?

8 A. I have heard of Betty.

9 Q. Okay, you have heard of her?

10 A. Yes, sir; I have.

11 Q. You have never been with, you have never met with
12 Betty?

13 A. I don't remember. I'm not sure.

14 Q. You never met with Brian Neely?

15 A. No, I see Brian occasionally on the streets and
16 talk to him.

17 Q. Okay, but you never met with Walter Stanphill?

18 A. I really haven't, sir.

19 Q. And you would, you would agree that Walter
20 Stanphill by reputation is involved in just about everything,
21 at least in the black community; is that correct?

22 A. I imagine so.

23 BY MR. EVANS: Your Honor, what Walter
24 Stanphill--

25 BY THE WITNESS: --I imagine; I really don't
26 know what he is involved--

27 BY MR. EVANS: --or whatever his name is, is
28 involved in has absolutely nothing to do with this
29 trial.

1 BY MR. LUMUMBA: You know, they shouldn't put
2 a witness on if they don't want her cross-examined.

3 BY THE COURT: Well--

4 BY MR. LUMUMBA: --Let me tell you what, let
5 me tell you what--

6 BY MR. EVANS: --Would the Court rule on the
7 motion first.

8 BY MR. LUMUMBA: This is the issue here. The
9 issue is he puts her on and asks her questions
10 about her being active in the community. Now he
11 shouldn't open doors if he doesn't want people to
12 walk through them.

13 BY MR. EVANS: --They shouldn't--

14 BY MR. LUMUMBA: --Excuse me; excuse me. When
15 I get finished, then he talks; okay. This is the
16 situation here. This is the situation.

17 BY THE COURT: Well, I can save you some
18 time. Go ahead and ask the question. You are
19 entitled to ask that.

20 BY MR. LUMUMBA: Good, good.

21 BY MR. LUMUMBA:

22 Q. Now Walter Stanphill is very active in the
23 community by reputation; right?

24 A. By reputation, I have heard of him.

25 Q. But you have never been to a meeting that he was
26 at, have you?

27 A. No, sir; I haven't.

28 Q. And you are supposed to be active; right?

29 A. I am active.

1 Q. I see. L.B. Johnson. Have you ever been to a
2 meeting with her?

3 A. There is Rust College Tri-County Club; right.

4 Q. Oh, okay. But you didn't ask her about this case?

5 A. No, sir. I am president of that club.

6 Q. Well, now Robert Brand; do you know Mr. Robert
7 Brand who is planning on running-- is there some new black
8 district in this, in this community or something that--

9 A. I have heard the name.

10 Q. Yeah, and you know he is planning on running;
11 right?

12 A. I do.

13 Q. What did he say about this case?

14 A. He didn't say anything about the case.

15 Q. So you really know a lot of opinions, don't you?
16 You don't know anybody's opinion but your own; is that right?

17 A. Right.

18 Q. Well, now let me say this.

19 (Brief pause while Mr. Lumumba confers with
20 Mr. Freelon who then leaves the courtroom.)

21 Q. Has anybody-- nobody has ever told you they could
22 be fair; right?

23 A. No, I live here.

24 Q. Okay. Let me ask you about a few things here.

25 BY MR. LUMUMBA: I move the admission of all
26 these exhibits, Judge. I assume there is no
27 objection? They have been marked into evidence.

28 BY THE COURT: I thought we had already done
29 that. No objection, is it?

1 BY MR. EVANS: No objection to the ones that
2 relate to this case. I saw one or two that I
3 wasn't sure whether they did, but as long as they
4 have got articles in them about this case, I don't
5 have any objection.

6 BY MR. LUMUMBA: Judge, what he may have saw
7 is a cover sheet which is meant to identify--

8 BY THE COURT: I saw that. Let them be
9 admitted.

10 BY MR. LUMUMBA: Okay.

11 (DEFENDANT'S EXHIBITS "A," "B," "C," AND "D"
12 PREVIOUSLY MARKED WERE RECEIVED IN EVIDENCE TO THE
13 MOTION FOR CHANGE OF VENUE.)

14 BY MR. LUMUMBA:

15 Q. What are the papers which are published in this
16 county?

17 A. What are the--

18 Q. --Let's not say published in this county, but what
19 are the papers which are circulated in this county?

20 A. That publish the newspaper you mean?

21 Q. Yeah, which papers are circulated around here?

22 A. There is a Tupelo Daily Journal. There is a
23 Courier.

24 Q. Okay.

25 A. As far as I know.

26 Q. Are you familiar with the Clarion Ledger?

27 A. I pick it up sometimes, but it's not-- I don't
28 subscribe to it.

29 Q. I understand, but it is circulated in this county

1 also; right?

2 A. Probably so, but I haven't bought one in about a
3 year or two.

4 Q. Are you familiar with the Commercial Appeal?

5 A. Yes, sir. Sometimes I buy one.

6 Q. And that comes from Memphis; right?

7 A. It does.

8 Q. It is also available to people in this county?

9 A. If they want to buy one; yes, sir.

10 Q. There is also a TV station; right?

11 A. That's right.

12 Q. In fact, there is a TV station based here; is that
13 correct?

14 A. I know Channel 9 is here.

15 Q. Okay. Now I'm going to show you what is now marked
16 as Exhibit number Zero [sic]?

17 A. Yes, sir.

18 Q. I am interested in you taking a look at some of
19 these articles which are Exhibit Zero.

20 BY MR. HORAN: What number is that?

21 BY MR. LUMUMBA: Zero.

22 BY THE COURT REPORTER: "D."

23 BY MR. LUMUMBA: Oh, that is "D"? Oh, let me
24 see.

25 BY THE COURT REPORTER: That is supposed to be
26 a "D."

27 BY MR. LUMUMBA: Oh, a "D," okay; I'm sorry.

28 BY MR. LUMUMBA:

29 Q. This is Exhibit "D." I am showing you the first

1 page in Exhibit "D" for you. Now you recognize that as being
2 a clip from the Daily Journal?

3 A. I do.

4 Q. Okay, now that is a paper that is circulated in
5 this community and published in this community; is that
6 correct?

7 A. Yes, sir.

8 Q. And do you see that article there where it says,
9 "Former employee charged in slaying of four Winona furniture
10 store people"?

11 A. Yes, sir.

12 Q. That appeared in the paper; right?

13 A. Yes, sir.

14 Q. And it goes on to say in that article that "Curtis
15 Flowers, 26, of Winona was charged"; is that correct?

16 A. Yes, sir.

17 Q. And it goes on to talk about the District Attorney,
18 Doug Evans, talking about Flowers had moved to Texas after
19 the killings. You remember hearing about that; right?

20 A. I read it in the paper here; yes, sir, I read it.

21 Q. And then it talks about some of the evidence that
22 they got against Flowers and the fact that they had to
23 extradite Flowers back from here, or they were going to be
24 extraditing him; is that correct?

25 A. That is what the article is saying.

26 Q. Now, you know, people when they read the paper, you
27 would agree with me, they don't know that they are going to
28 sit on a jury; right?

29 A. What is--

1 Q. --When a person reads a paper, he doesn't
2 necessarily know if she is going to be called to sit on a
3 jury; right?

4 A. I imagine not.

5 Q. Pardon?

6 A. I guess not.

7 Q. Okay, I mean like for instance, when you read the
8 paper, you had no idea whether you were going to be called to
9 sit on the jury or not; right?

10 A. Right.

11 Q. And the same thing is true of other people; right?

12 A. I imagine so.

13 Q. Now some people would read, "Former employee
14 charged in slayings of Winona"--

15 BY MR. HORAN: --Your Honor, what other people
16 would read and what they would think is not
17 relevant. We are getting way off of what this
18 hearing is about, and we object to this line of
19 questioning. It is just irrelevant, Your Honor.

20 BY MR. LUMUMBA: Maybe what we should do is
21 allow me to finish my question. May I finish my
22 question?

23 BY THE COURT: Yeah, but do not answer it
24 until I rule.

25 BY MR. LUMUMBA:

26 Q. Okay. Now if somebody is told in the paper that
27 the man is charged with killing people, that is a reason to
28 conclude that maybe he did it; right?

29 A. Not necessarily.

1 **BY THE COURT:** Sustained. The objection is
2 sustained.

3 BY MR. LUMUMBA: Judge, if you are not going
4 to let me have a hearing, tell me now, okay.

5 **BY THE COURT:** I'm only going to let you ask
6 questions that I think are proper. So go ahead.

7 BY MR. LUMUMBA: Well, why don't you let me
8 ask questions that the law thinks are proper.

9 **BY THE COURT:** Okay, well, you go ahead--

10 BY MR. LUMUMBA: --Can we get beyond you and
11 get to the law?

12 **BY THE COURT:** Go ahead, Mr. Lumumba.

13 BY MR. LUMUMBA: Okay, all right.

14 BY MR. LUMUMBA:

15 Q. So this says "Former employee charged in slaying";
16 is that correct?

17 A. That's what the headline is saying.

18 Q. Do you remember reading this? Did you read this?

19 A. Yeah, I think I read it.

20 Q. You think?

21 A. Yeah, it has been so long ago.

22 Q. Okay. What did that mean to you, that he was
23 charged? What did that mean?

24 A. What is your question now?

25 Q. What did that mean to you? How did you feel when
26 you read that?

27 A. Just what it said in the paper, you know, until the
28 trial, I guess.

29 Q. Okay, and what did you think about the incident,

1 the fact that four people were tragically killed?

2 A. I really don't know because I wasn't there, sir.

3 Q. Oh, just because you weren't there, you thought it
4 was okay?

5 A. Well, really I really don't know what happened.
6 You can read stuff.

7 Q. Uh-huh; I see; I see. Then they have an article in
8 here where it says, on the next page it says, "Capital Murder
9 Trial Begins Today." Is that right? Do you remember seeing
10 that in the paper as the next page?

11 A. (Pause while witness is turning pages.)

12 Q. Just the very next page.

13 A. Okay, thank you.

14 Q. Let me see if we can get you right to it?

15 A. Thank you.

16 Q. All right. Do you see that there?

17 A. I do.

18 Q. And what does it say right under it?

19 A. It says, "Man accused of murdering four people at
20 Winona Furniture." It's last year.

21 Q. You don't think that would bias anybody, do you?

22 A. What is your question, sir?

23 Q. You don't think that would make anybody prejudice
24 against Mr. Flowers, the--

25 BY MR. HORAN: --Objection, Your Honor.

26 BY THE COURT: Sustained.

27 BY THE WITNESS: --I think--

28 BY THE COURT: --The only issues that are
29 relevant to this hearing is one, what her opinion

1 is and on what was the basis of her opinion. That
2 is the only relevant issue. All of this is totally
3 irrelevant, and the objection is sustained.

4 BY MR. LUMUMBA:

5 Q. Let's go to-- turn your page to the next page. Do
6 you see the next page? The one right after the one that you
7 just were looking at.

8 A. I see it.

9 Q. Down in the right hand corner, what does it say?

10 A. "Testimony begins in Winona slaying case."

11 Q. And do you remember reading that article?

12 A. I might have read it.

13 Q. And do you see right there it says, "Picking the
14 jury," over there in the far right hand corner?

15 A. I do.

16 Q. What does it say there?

17 BY MR. HORAN: Your Honor, I object to this
18 line of questioning--

19 BY THE WITNESS: --He says--

20 BY MR. LUMUMBA: She said she read the
21 article.

22 BY MR. HORAN: Ask if that article was the
23 basis of her opinion.

24 BY THE COURT: Right.

25 BY MR. HORAN: Reading the article--

26 BY THE COURT: --You have got to lay the
27 predicate.

28 BY MR. LUMUMBA: No, no, no, no. She said she
29 read the article. I'm going to--I am able. She

1 has an opinion; she read the article. I'm not only
2 able to ask her what they want me to ask her, what,
3 that is the basis of her opinion. I am able to ask
4 her things that should help her formulate her
5 opinion. If they haven't reasonably, then that is
6 a reason to question her credibility.

7 **BY THE COURT:** But what you have to do is you
8 have to ask her if she has an opinion and then ask
9 her on what that opinion is based--

10 **BY MR. LUMUMBA:** --He already asked her if she
11 had an opinion. I am on cross-examination. I am
12 trying to cross-examine what she said. That's the
13 way you do it.

14 **BY THE COURT:** Okay, if she--

15 **BY MR. LUMUMBA:**

16 Q. --Do you see where it says, "Picking the jury"?

17 A. I do.

18 Q. What does it say right under there?

19 A. "Although he is a defendant and an African-American,
20 all jury are white."

21 Q. It says all the jurors are white?

22 A. It says, "Although the defendant is an African-
23 American, all the jurors are white."

24 Q. Oh. Now that happened here. That was the trial
25 here in Tupelo; right?

26 A. It was. I guess so.

27 Q. Yeah, right here in Lee County; right?

28 A. Yes, sir.

29 Q. Okay. Have you asked any white people if they hold

1 any bias against this black man allegedly who killed three
2 white people?

3 A. No, sir.

4 Q. Do you think that might happen sometime?

5 A. What is your question now?

6 Q. That white people who sit on the jury might have
7 some bias against a person--

8 BY MR. EVANS: --Your Honor, that has--

9 BY THE WITNESS: --I hope not--

10 BY MR. EVANS: --absolutely nothing to do with
11 this change of venue motion.

12 BY MR. LUMUMBA: Oh, that is not my question.

13 BY THE COURT: She has answered it.

14 BY MR. LUMUMBA:

15 Q. I'm not asking what you hope. I am thinking what,
16 what is your opinion of that? Is it your opinion that that
17 would not affect the white people who sit on the jury? Is
18 that your opinion?

19 A. Not in Lee County.

20 Q. Pardon?

21 A. I don't think so in Lee County.

22 Q. You don't think so in Lee County. Well, where
23 else-- is Lee County different than other counties?

24 A. I live here--that's why-- I can only speak for Lee
25 County, sir.

26 Q. This is Lee County where, where Mr. Robert Brand
27 lives; right?

28 A. Whoever you say lives here; I guess you know.

29 Q. This is Lee County where in 1976 they had a--

1 BY MR. HORAN: --Your Honor--

2 BY MR. EVANS: --This is not proper.

3 BY THE COURT: The objection is sustained.

4 BY MR. LUMUMBA:

5 Q. --marching, and the Klan was--

6 BY THE COURT: --Sustained, Mr. Lumumba. You
7 are directed not to answer that question.

8 BY MR. LUMUMBA:

9 Q. Well, you know about Lee County. You remember the
10 United League?

11 A. I do.

12 Q. Do you remember them marching against the Klan?

13 A. Yes, sir.

14 Q. That wasn't too long ago, was it?

15 A. Well, I imagine not, sir.

16 Q. Do you remember the Klan standing out in the front
17 lawn of the police station here in Lee County when they were
18 marching?

19 A. I do.

20 BY MR. EVANS: Your Honor, this is not
21 relevant to what we are here on. I object. I
22 don't know how many times I am going to have to
23 object before the Court can get Mr. Lumumba's
24 attention, but this is improper.

25 BY THE COURT: I sustain the objection.

26 BY MR. LUMUMBA: Is he supposed to be raising
27 his voice at me? Is that what this is all about?

28 BY THE COURT: The objection is sustained.
29 Move on and ask a question.

1 BY MR. LUMUMBA:

2 Q. Okay. Now this is the Lee County that you are
3 defending, the same one we just got finished talking about;
4 right?

5 A. (No verbal response.)

6 Q. Now you see the next page? Do you see the next
7 page there?

8 A. What page is that, sir?

9 Q. Well, the next page also has that same article
10 about testimony begins in Winona slaying case; is that
11 right? Down in the right hand corner?

12 A. (No response).

13 Q. Right hand corner of the page.

14 A. Where the one says, "Testimony begins in Winona
15 slaying"?

16 Q. Right. Do you see that?

17 A. Yes, I do.

18 Q. Okay. Now if we go to the page after that, turn
19 the page after that. Okay?

20 A. The same article.

21 Q. Okay, in other words, the page which in the top, at
22 the top, on the top line in the middle it says, "That's a
23 wrap-up." Do you see that?

24 A. (Pause) This.

25 Q. "That's a wrap-up." Okay. Are you looking at
26 that?

27 A. I was looking for the word, "That's a wrap-up."

28 Q. You don't see that at the top of the page?

29 A. Yes, sir. I'm sorry.

1 Q. What does it say there on, at the top where it
2 says, "Trial" over on the right hand side?

3 A. Do you want me to read it to you?

4 Q. Yeah, read that where it says, "Trial." Continue--

5 BY MR. HORAN: --Objection, Your Honor.

6 BY MR. LUMUMBA:

7 Q. Read the first sentence.

8 BY THE COURT: Wait just a minute. What is
9 your objection?

10 BY MR. HORAN: My objection is it's not
11 necessary nor relevant for her to read this
12 article. The question turns on whether or not this
13 article had or was the basis of her opinion or
14 would change her opinion in some way. It's not
15 necessary for her to go back and read the article
16 and now at this point in time maybe form an opinion
17 or ask her her opinion about what she is reading.
18 It is not relevant, Your Honor.

19 BY MR. LUMUMBA: Well, he has just conceded
20 that, that the question is whether this would
21 change her opinion in some way. We can't tell
22 whether it would change her opinion until she reads
23 it.

24 BY MR. HORAN: Not change her opinion, Your
25 Honor; ask her about what that means to her when
26 she reads it--

27 BY MR. LUMUMBA: --Hold, hold, hold. That's
28 what you just said.

29 BY MR. HORAN: That's the question he is

1 asking, whether or not, what does that mean to her.

2 BY MR. LUMUMBA: Is he going to change--

3 BY THE COURT: Do you remember what the
4 question is?

5 BY THE WITNESS: That he asked me?

6 BY MR. LUMUMBA: I just asked her to read it.
7 I haven't asked her a question.

8 BY THE COURT: Do you remember what he wanted
9 you to do?

10 BY MR. HORAN: Read it.

11 BY THE COURT: Go ahead.

12 BY MR. LUMUMBA:

13 Q. Read it; right.

14 A. Read the entire article?

15 Q. Read the first sentence there.

16 A. "In the opening argument Evans told the jury
17 Flowers' right hand tested positive for gunpowder sued
18 (residue) when he was questioned by police four hours after
19 the shooting."

20 Q. Okay, so he tested positive for gun residue; is
21 that what it says?

22 A. I guess; yes, it does.

23 Q. Okay, and it doesn't say there that the amount of
24 residue was so small you couldn't even see it. It doesn't
25 say that, does it?

26 A. No, it doesn't--

27 BY MR. EVANS: --Your Honor, this is not
28 relevant--

29 BY MR. LUMUMBA: --but what--

1 **BY THE COURT:** --Sustained.

2 BY MR. LUMUMBA:

3 Q. But this is what anybody that read this page would
4 have seen what is written here; right?

5 A. What is your question--

6 BY MR. EVANS: --Again, this is not relevant,
7 what anybody that read this page. Her opinion is
8 the only one that is before this Court, and I
9 object--

10 BY MR. LUMUMBA: --Is that going to be the
11 same when I put my witnesses on the stand? You can
12 only ask about their opinion? Is that okay?

13 **BY THE COURT:** Yes, it is.

14 BY MR. LUMUMBA: Okay, that's good. That's
15 good, as long as we all play by the same rules.

16 BY MR. EVANS: We will just go through the
17 number of questions that he has asked if that is
18 all right with the Court.

19 **BY THE COURT:** Please don't.

20 BY MR. LUMUMBA: Okay. Judge, I remember when
21 we were here before, and we had some black people
22 out here and they were laughing, and you told them
23 to be quiet. I am being distracted by the noise in
24 the audience. Can you take care of it?

25 **BY THE COURT:** Let's don't distract the
26 attorney.

27 BY MR. LUMUMBA: Pardon?

28 **BY THE COURT:** I said let's don't distract the
29 attorney.

1 BY MR. LUMUMBA: Okay, all right. I just want
2 us to play by the same rules. And actually, if
3 everybody can make noise, it might be all right.

4 BY MR. LUMUMBA:

5 Q. Now on the next page that has "Local" at the top,
6 do you see the next page that has "Local" at the top? The
7 very next page after the page you were on. It has got a "D"
8 up at the top also. Do you see that one?

9 A. (No verbal response; Counsel approaches the
10 witness.)

11 Q. Do you see an article here that talks about the
12 case?

13 A. Yes, sir.

14 Q. And you just pointed to it immediately. What was
15 it that brought that article to your attention that made you
16 know it talked about the case?

17 A. I turned to the page because you asked me to turn
18 the page, sir.

19 Q. No, my question is you pointed to the article too,
20 didn't you?

21 A. You asked me to turn the page, and I did.

22 Q. Listen to my question.

23 A. Yes, sir.

24 Q. After-- you turned the page; is that correct?

25 A. I did as you asked me to do--

26 Q. And after you turned to page, you pointed to the
27 article; right?

28 A. Because you asked me to turn the page.

29 Q. No, no, no. I didn't ask you about turning the

1 page. What I'm asking you now is did you point to the
2 articles once you turned the page?

3 A. Yes, because we was talking about the case.

4 Q. Okay, how did you know that was about the case that
5 you pointed to?

6 A. It had Winona on it because just like you asked me
7 to turn the page.

8 Q. And you can see that right away; right?

9 A. Right, because you asked, right.

10 Q. Okay, and what does it say right away that made you
11 know this right away?

12 A. The Winona-- you said turn the page--

13 Q. --What does it say?

14 A. Do you want me to read the article to you?

15 Q. Why don't you tell me what you saw to let you know
16 it was about this case?

17 A. Because we are talking about Winona and the word
18 "Winona" is in bold, is in big letters--

19 Q. --What does it say?

20 A. "Fellow inmate says Flowers confessed to killings
21 in Winona."

22 Q. Confessed to killings. Did you read that article?

23 A. I will read it now. I probably read it; I don't
24 know. I will read it if you want me to.

25 Q. No, no. I'm asking did you read it at the time?

26 A. Have I read it when?

27 Q. Did you read it back at the time it was published?

28 A. I don't remember. I read the paper every day,
29 Mister. I read articles every day.

1 Q. Did you read this one?

2 A. I might have.

3 Q. "Fellow inmate says Flowers confessed to the
4 killings." Is that what it says?

5 A. Fellow inmates. Is that the one you are referring
6 to.

7 Q. Uh-hum.

8 A. Yes, sir.

9 Q. That's what it says; right?

10 A. Yes, sir.

11 Q. Okay. Then on the next page; turn just to the next
12 page. Do you see anything on the next page about the case?

13 A. The top of the page says "Local," "Local," "State."

14 Q. Yes. Do you see anything there about the case?

15 A. Yes, sir, right under "Local, State."

16 Q. What does it have along with the, along with the
17 article? Does it have anything there with it, any picture or
18 anything?

19 A. Yes, sir.

20 Q. What picture does it have?

21 A. It says, "Defendant."

22 Q. Okay, then it calls him "accused murderer"; is
23 that right?

24 A. Yes, sir.

25 Q. Okay, and then it has got-- that is right here in
26 the page, and it says his name is Curtis Flowers; is that
27 right?

28 A. Just a minute. Yes, sir.

29 Q. Okay. And then it has his picture there and just,

1 we need to describe this for the record. We have got to make
2 a good record on this, okay? So for the record it has his
3 picture there, and he seems to be-- they have his picture
4 there and they refer to him as an "accused murderer."

5 BY MR. HORAN: Your Honor, I object to going
6 through all this. The article is going to be sent
7 to the Supreme Court if necessary. Him going over
8 what is in the article is irrelevant. The State
9 would object to the procedure that Counsel for the
10 Defendant is following at this time as being
11 irrelevant and immaterial.

12 BY THE COURT: It is already into evidence.

13 BY MR. LUMUMBA: Okay, is that what-- are you
14 sustaining the objection or not?

15 BY THE COURT: Yes, sir. I am sustaining it
16 as being cumulative. It's in evidence.

17 BY MR. LUMUMBA: Okay. So is the Court ruling
18 is that you can't ask people about things that is
19 in evidence? Is that the Court's ruling?

20 BY THE COURT: No, sir. That is not what I'm
21 ruling.

22 BY MR. LUMUMBA: Okay, good.

23 BY MR. LUMUMBA:

24 Q. Okay, now let's go to the next page?

25 A. The next page?

26 Q. Yes, ma'am. Do you see an article there that
27 relates to the case?

28 A. (Pause). Yes, sir.

29 Q. And what does that headlines of that article say?

1 A. "Witnesses testify to seeing Defendant near murder
2 scene."

3 Q. Did you read that article?

4 A. Did I read the article?

5 Q. Yeah, did you read it--

6 A. --I might have read it.

7 Q. Back then?

8 A. I might have read the article; yes, sir.

9 Q. I see, okay. And then on the next page there is
10 another article there that says "Winona" up at the top; is
11 that right?

12 A. The next page?

13 Q. Yes.

14 A. Does it say "Local" and "State"?

15 Q. Uh-hum.

16 A. Oh, yes. Yes, sir.

17 Q. Okay, and then it has more information about the
18 case and about what various different witnesses were saying;
19 is that correct?

20 A. (Pause; no response.)

21 Q. Does it have that?

22 A. Yes, sir; it says six, something about six eye
23 witnesses called.

24 Q. Said what?

25 A. It said something about six eye witnesses called
26 Tuesday and Wednesday.

27 Q. Oh, okay.

28 A. I was just reading the article.

29 Q. Right, and then they talk about the eye witness

1 saying something about what Flowers did; is that correct?

2 BY MR. HORAN: Your Honor, I object on the
3 same basis I objected to the last five or six times
4 as to the form of the question and the content.

5 BY THE COURT: Sustained.

6 BY MR. LUMUMBA:

7 Q. Move to the next page.

8 A. The next page?

9 Q. And what do you see on that page that comes
10 immediately to your attention?

11 A. "Winona slaying trial goes to jury."

12 Q. Okay, and what does it say right under that?

13 A. "Defendant Curtis Flowers proclaims his innocence.
14 He killed four people in the furniture store in July of
15 1976."

16 Q. And then if you go to the--

17 BY MR. HORAN: --Objection, Your Honor. Same
18 objection as to the form and content of the
19 question.

20 BY THE COURT: I will note a continuing
21 objection to that.

22 BY MR. HORAN: Thank you.

23 BY MR. LUMUMBA:

24 Q. Let us go to the next page and this, by the way, is
25 October 7th if you go to the next one. That page that you
26 are looking at now, what date is that? What date is that
27 from, up in the right hand corner of the page?

28 A. The one with the Winona slaying jury?

29 Q. Uh-hum.

1 A. October 17th.

2 Q. Okay, go to the next page. And it says down in the
3 left hand corner, it says, down about midway on the left-hand
4 side, do you see where it says "Winona"?

5 A. Yes, sir; I do.

6 Q. Okay. Now let's go to the next page.

7 A. The next page?

8 Q. Yes, ma'am. On the right hand side.

9 A. Yes, sir.

10 Q. What does it say?

11 A. "Jury says Flowers guilty, should die."

12 Q. Okay, did you read that article?

13 A. I might have.

14 Q. Were you aware that Mr. Flowers has already been
15 sentenced to death in this case?

16 A. No. The case has just been in and out with me.

17 Q. Oh, so you weren't aware he has been sentenced to
18 death?

19 A. Well, I have read the case, you know, in and out
20 when--

21 Q. --but I mean?

22 A. --when it was going on, but for keeping up with it,
23 I haven't.

24 Q. When you came in here to testify and they asked you
25 the question if you had an opinion?

26 A. Yes, sir.

27 Q. Were you aware when you gave an answer to that
28 question that Mr. Flowers had been sentenced to death in this
29 case?

1 A. No, because I just read the article. I didn't keep
2 up with the case.

3 Q. Okay. So when you gave your opinion that the
4 county would be fair, you were not aware at that time that
5 Mr. Flowers had been sentenced to death and that the people
6 in the county knew if they read this paper that he had been
7 sentenced to death?

8 A. What is your question, sir?

9 Q. When you answered that question-- well, when you
10 first came in here--

11 A. Yes, sir.

12 Q. --you were not aware that the people in the
13 community had read a paper saying that Mr. Flowers had been
14 sentenced to death?

15 A. Was I aware the people in the community had read
16 it?

17 Q. Yes.

18 A. I haven't heard them talking to me about it.

19 Q. I see.

20 A. I can only talk about what was talked to me about.

21 Q. And you also did not remember that that was in the
22 paper?

23 A. No, to be honest, I didn't remember it.

24 Q. Okay. And then now you do remember that that not
25 only appeared in the paper, but it was also on TV; isn't that
26 correct?

27 A. I am sure it was.

28 Q. You are sure it was? If you don't-- do you
29 remember having that on TV that he was sentenced to death?

1 Do you remember that?

2 A. I don't remember it really positively saying yes, I
3 remember this and that.

4 Q. Okay, I see.

5 A. The case is irrelevant to me.

6 Q. And then on, if you go to, I think, to the next
7 page.

8 A. Next page?

9 Q. Up at the top it says, "That's a wrap-up."

10 A. Yes, sir.

11 Q. And then it has something down there about trial;
12 is that right?

13 A. Yes, sir.

14 Q. Okay. Okay, then on the next page, go to the next
15 page.

16 A. The next page?

17 Q. Uh-huh. And this, and by the way, if you look over
18 to the right hand side up at the top, what paper is this?

19 A. It says The Commercial Appeal.

20 Q. All right, that is the paper which is sold here in
21 this area; right? Is that correct?

22 A. Yes, it is.

23 Q. Okay, and then what it says over there about, on
24 the left hand side what does it say about this case?

25 A. "Witness sees suspect at furniture store."

26 Q. Now let's go over to the next page.

27 A. The next page?

28 Q. Yes. And then we just want to pass that page and
29 go on to the one after that?

1 A. Skip this one, the next page.

2 Q. The one you see and that is, and that page, what
3 date is that paper from?

4 A. Did you say skip the next page?

5 Q. Yes, please. And then go to the next page, and
6 what date is that from?

7 A. October the 18th, 1997.

8 Q. Okay, what does it say about the case on that page
9 in the headline?

10 A. "Accused killer is sentenced to death at first
11 trial."

12 Q. That is a big headline; is that right?

13 A. Yes, it is.

14 BY MR. LUMUMBA: Okay. I don't have any other
15 questions.

16 BY THE COURT: Redirect?

17 BY MR. HORAN: Nothing.

18 BY THE COURT: Is she finally excused?

19 BY MR. HORAN: She is.

20 BY THE COURT: Ms. Leeper, you are free to go.

21 WITNESS EXCUSED.

22 BY MR. HORAN: Just to make the record clear,
23 Your Honor, we will probably have some other
24 witnesses. We will have some other witnesses.
25 This is not all our witnesses. We are not resting
26 at this time.

27 BY THE COURT: Okay, who will you have next?

28 BY MR. LUMUMBA: We would call Ishmael
29 Muhammad.

1 **BY THE COURT:** He has been sworn.

2 **ISHMAEL MUHAMMAD,**

3 a black male called to testify by the Defendant on his Motion
4 for Change of Venue and having been sworn here previously on
5 this date, testified as follows, to-wit:

6 **BY THE COURT:** State your name for the record,
7 please, sir.

8 BY THE WITNESS: My name is Ishmael Muhammad.

9 BY THE COURT REPORTER: Would you spell it,
10 please.

11 BY THE WITNESS: I S H M A E L. M U H A M M A
12 D.

13 BY MR. LUMUMBA: Bear with us, please, just
14 one second, Judge. We are looking for an exhibit
15 here we need.

16 DIRECT EXAMINATION BY MR. LUMUMBA:

17 Q. Mr. Muhammad, could you once against share your
18 name with us, please?

19 A. Ishmael Muhammad.

20 Q. Okay, and Mr. Muhammad, share with the Court,
21 please, what is your educational background?

22 A. I went to high school, college and graduate,
23 graduated from law school at the University of Mississippi.

24 Q. And you graduated from the University of
25 Mississippi, did you?

26 A. Yes, sir.

27 Q. And did you receive any honors upon your graduation
28 from law school?

29 A. Yes, sir. I graduated at the top of my class,

1 seated number 8 in the class, so I had a little honors cord,
2 all that good stuff.

3 Q. Okay, Mr. Muhammad, were you, are you currently
4 working on a project, a legal project in Jackson,
5 Mississippi?

6 A. Yes, sir. Upon graduating from law school, I
7 received something called a scouting fellowship which is a
8 public interest fellowship, and it was given to me to
9 basically do workers' rights work in Mississippi.

10 Q. And were you requested by a group called the NCBL
11 or the National Conference of Black Lawyers to do a project,
12 you and others do a project here in Lee County?

13 A. Yes, sir. I work with a group called the
14 Mississippi Coalition for Justice and also a group called the
15 Malcolm X Grassroots Movement, and the National Conference of
16 Black Lawyers contacted us to conduct a survey, a jury
17 questionnaire survey of the community in regards to this
18 case.

19 Q. Is that survey still ongoing at this time?

20 A. We still have surveys out, but we have been able to
21 do about 75 to 100 so far.

22 Q. Did you do some yourself personally?

23 A. Yes, I did.

24 Q. And based upon the ones that you did, were you able
25 to reach any conclusions-- who did you talk to?

26 A. We basically talked to residents of Tupelo and
27 people who work in Tupelo. Some people who work in Tupelo,
28 of course, are not residents, but we talked to people in the
29 Tupelo community, and basically we asked them questions about

1 this case and whether they were aware of the case and how
2 they had become aware of the case and their opinion about the
3 Defendant in the case, questions like that.

4 Q. Okay, did you-- were there people-- what county is
5 Tupelo in if you are aware of that?

6 A. I believe it's in Lee County.

7 Q. Right.

8 A. Lee County.

9 Q. And was there information on the questionnaire
10 about whether the people lived and worked in Lee County?

11 A. Yes, it was.

12 Q. Okay, so were you able to ascertain in all the
13 cases whether the people just lived in Tupelo, or were you
14 ascertaining whether they lived in Lee County?

15 A. I believe that based on what was happening there, I
16 believe they were determining whether they lived in Tupelo or
17 not. But they clearly worked in Tupelo, and I think that
18 when they were asked on the questionnaire, they were speaking
19 as if they, whether they lived in Tupelo or not. But
20 everyone we spoke to, everyone I spoke to-- we had about
21 three other people with me conducting this survey. We each
22 did about 25 surveys apiece. Everyone I spoke to lived in
23 Tupelo or in Lee County somewhere.

24 Q. Okay, and did you--

25 A. --But that is not necessarily reflected on the
26 survey all the time because they were answering the question
27 as if they, as if whether or not they lived in Tupelo.

28 Q. Okay. Now your survey, was it called a Lee County
29 survey?

1 A. Yes.

2 Q. Or do you remember?

3 A. Yes, it was.

4 Q. Now Mr. Muhammad, based upon your interview, and
5 about how many people did you say that you interviewed that
6 you can recall?

7 A. I spoke to about, personally I spoke to about
8 fifteen people.

9 Q. Okay.

10 A. And all in all, we spoke to between 75 and 100 out
11 of the four of us.

12 Q. Okay, and was the findings with the other people
13 consistent with your findings?

14 A. Pretty much, yes.

15 Q. Now let me ask you this. Your own personal
16 findings, what did you find out about people's perception of
17 this particular trial, and you explain in your own words, of
18 this trial and what is on their mind here in Lee County. By
19 the way, did you speak to people in the white community?

20 A. I spoke to people in, I don't know if it was the
21 white community or the black community, but I basically spoke
22 with mostly white residents here. And the majority, but we
23 spoke to some black people too.

24 Q. Okay, and go ahead and share with me what the
25 opinion of the people were?

26 A. For the most part, people were familiar with the
27 case. They were familiar with the fact that the case was
28 brought here from Montgomery County, from Winona. They were
29 familiar with the alleged crime, and for the most part they

1 felt like the Defendant in the case had committed the crime.
2 A couple of people I talked to said they didn't know anything
3 about the case which we thought was kind of hard to believe,
4 but that is neither here nor there, and those people felt
5 free to share their name with us. But mostly people who had
6 an opinion about the case, the opinion was usually negative
7 against the Defendant, and they usually were unwilling to
8 give their names.

9 Q. Okay, I'm going to show you a number of documents
10 and ask you if you can, if you recognize these. They aren't
11 marked yet. I'm just going to ask you if you recognize and
12 then if you do--

13 BY MR. EVANS: --Your Honor, we would like to
14 review anything that he is going to ask this
15 witness to testify from.

16 BY THE COURT: Before he does that, you will
17 be able to. He just asked him to identify them.

18 BY MR. LUMUMBA:

19 Q. Are you familiar with those?

20 A. Yeah, these are some of the surveys we conducted
21 that we handed over to you. Most of them are mine. There
22 are two other surveys in there from one of the persons that
23 was conducting the surveys with us.

24 (Documents handed to Mr. Evans.)

25 BY MR. LUMUMBA: Judge, I would like to have
26 these marked, and I would like to have some
27 opportunity in the future to get copies of these.

28 BY MR. EVANS: Are you talking about for
29 identification?

1 BY MR. LUMUMBA: No, I'm going to ask they be
2 entered into evidence.

3 BY MR. EVANS: Your Honor, I object to these
4 being introduced in evidence. There is nothing on
5 these to authenticate them in any way. There is
6 nothing that states who these people were or if
7 there were, in fact, people. There is no
8 addresses, no names, no nothing on here. I think
9 that it would be improper. Anyone could come in
10 and bring in a list of papers. I think it is
11 improper to use this as a survey without some way
12 of--

13 **BY THE COURT:** It's admitted. I'm going to
14 admit it for this purpose. He says that is what he
15 based his opinion on, and it is admissible for that
16 purpose. As to whether it's an accurate survey or
17 scientifically done and all like that, the Court is
18 not going to consider it from that standpoint.

19 BY MR. EVANS: Yes, sir.

20 **BY THE COURT:** I will consider it in relation
21 to whether or not it was used for him to form his
22 opinion on this matter. I will admit it. Do you
23 want to admit them as one exhibit?

24 BY MR. HORAN: That's what I was going to
25 say. One exhibit will be fine with the State so
26 she doesn't have to mark them all. If he would
27 staple them all together, it would probably be
28 easier for her.

29 BY MR. LUMUMBA: Yeah, if you would staple

1 them or paper clip, it doesn't make any-- stapling
2 is fine.

3 (APPROXIMATELY 14 PAGES OF SURVEYS WERE
4 RECEIVED IN EVIDENCE AND MARKED COLLECTIVELY AS
5 DEFENDANT'S EXHIBIT "E" TO THE MOTION FOR CHANGE OF
6 VENUE.)

7 BY MR. LUMUMBA: By the way, Judge, we are
8 offering these for the purposes you suggested and
9 for all other purposes. It is our position that he
10 has authenticated them. He has said that he talked
11 to people who identified themselves from Lee County
12 and that the people who identified themselves from
13 Lee County-- in fact, you will see on here there is
14 an answer, "Do you live in Lee County?" "Do you
15 work in Lee County?" There is answers to those
16 questions, and if he can authenticate these, you
17 don't need any other authentication. He is a
18 witness. He is under oath. His authentication of
19 the surveys he did is sufficient. And now, you
20 know, it's up to the Court to determine how much
21 weight to give to them, but there certainly is no
22 limitation that should be made on the admissibility
23 of these items.

24 BY THE COURT: I have admitted them.

25 BY MR. EVANS: Your Honor, as to the other
26 reasons he is offering them, I still object because
27 there is no way that he can even sit up here and
28 say who gave these surveys.

29 BY THE COURT: And, of course, I have already

1 addressed that in my ruling, and my ruling stands.

2 BY MR. LUMUMBA: It didn't go quite all the
3 way through.

4 (Mr. Lumumba staples Exhibit "E" again.)

5 BY MR. LUMUMBA:

6 Q. Okay, I'm showing you now what is marked as Exhibit
7 number "E" and ask you to share with the Court again what you
8 have there, and if you can go through those documents and
9 tell us the answers that you were able-- do those reflect the
10 answers that you received from the people that you
11 interviewed?

12 A. Yes, they do.

13 Q. Do those reflect also the answers of some other
14 interviews that you happened to have in your possession?

15 A. Yes, they do.

16 Q. Okay, and could you go through those, please, and
17 tell us what, in fact, was said to you in your questioning?

18 A. The first question was, "Do you live in Lee
19 County?" The majority of responses to that was yes. The
20 second question was, "Do you work in Lee County?" and the
21 majority of the responses to that was yes.

22 The third question was, "Have you heard the name of
23 Curtis Flowers?" and the majority of responses to that was
24 yes.

25 The fourth question was, "Are you familiar with the
26 case in which four people were killed in a Tardy furniture
27 store in July '96 in Winona, Mississippi, and then this case
28 was transferred from Montgomery to Lee County?" The majority
29 of the response was that they had heard of the case. Some

1 people didn't necessarily hear about the venue issue itself.

2 "Do you remember the defendant's name?" There
3 were even responses to that as to whether the defendant's
4 name was Flowers or not. Some people weren't sure.

5 "What is the last thing you remember about the
6 case?" That was the seventh question. Some remembered the
7 last thing being the change of venue. Some remembered the
8 last thing being that the trial was here. Some remembered
9 the last thing being that he was found guilty.

10 "How do you know about the case?" The majority of
11 responses to that was TV, newspaper. No one really heard it
12 on the radio.

13 "Have you talked about the case with other
14 people?" Some had; some had not.

15 "Have you heard anyone else discuss the case?"
16 Some had; some had not. For the most part, several people
17 had discussed the case or heard this case discussed amongst,
18 up to ten other people; the lowest, two other people.

19 "Did the person or persons you heard discuss the
20 case have an opinion about whether the Defendant was guilty
21 or not guilty?" There were some that said people have an
22 opinion that he was guilty, others that is, and some said
23 that no one had any other opinion.

24 And as to the 13, did the person I was interviewing
25 have an opinion as to whether the Defendant was guilty or
26 innocent. The majority of the response to that was yes, that
27 he did it. And the date that we took these surveys was
28 August 29th, these particular ones.

29 Q. Could you look through those, please, and tell me

1 out of those surveys that you have how many-- first of all,
2 how many do you have in your hand there?

3 A. (Pause) I have 14 here.

4 Q. And out of those 14 surveys, how many people in
5 that file had an opinion that the Defendant was guilty?

6 A. (Pause) 10 of the 14.

7 Q. 10 of the 14?

8 A. Yes.

9 Q. Was that consistent with, was that consistent with
10 the other surveys that you had an opportunity to see?

11 A. Yes, they were.

12 Q. Now can I see that, please?

13 (Pause while Mr. Lumumba looks at the
14 surveys.)

15 Q. Okay. Finally, Mr. Muhammad, is there a place on
16 the form-- first of all, you didn't have any kind of subpoena
17 power or anything, did you?

18 A. No, I didn't.

19 Q. So you couldn't force anybody to give their name
20 then, could you?

21 A. No, I couldn't.

22 Q. And what was the procedure that you went about to
23 try to account, to get names in this case?

24 A. I first asked people if they would basically like
25 to answer the survey. If they didn't, they didn't. If they
26 did, then I asked them the questions. I wrote down the
27 responses. At the end I asked them if they would like to
28 give their name. I tried to explain that it wouldn't get
29 them in any trouble or anything. And they would decide if

1 they would or wouldn't.

2 Q. So some of them give their name?

3 A. Some of them gave me their name.

4 Q. Did some of them refuse to give their name?

5 A. Some of them refused to give their name.

6 Q. Did some of them give a first name?

7 A. Some gave a first name. Some gave a first and last
8 name.

9 BY MR. LUMUMBA: I have no further questions
10 of this witness at this time.

11 CROSS EXAMINATION BY MR. HORAN:

12 Q. Mr. Muhammad, my name is Kevin Horan. I am an
13 assistant district attorney. If I ask you anything that you
14 don't understand, just feel free to either let me rephrase my
15 question or ask me to repeat myself; okay?

16 A. All right.

17 Q. You haven't provided this Court any statistical
18 analysis, have you, as to these questionnaires? Have you?

19 A. In terms of statistical--

20 Q. As to what responses, statistical analysis,
21 percentages. You say most of the people said this. Most of
22 them said that, but you have only provided 14 of the
23 questionnaires. Right?

24 A. That's correct.

25 Q. So you are not providing any statistical or
26 concrete percentages to present to the Judge as to what these
27 responses were or anything like that, are you, here today?

28 A. Provided in my testimony, yes.

29 Q. That is not my question. I said you haven't

1 provided the Court any statistical analysis of your surveys
2 on paper or in writing? You do not--

3 A. --On paper, no, I haven't typed it up a report or
4 anything.

5 Q. And you were working for whom?

6 A. I was working for the Malcolm X Grassroots Movement
7 and the Mississippi Coalition for Justice.

8 Q. Okay, and how did you get involved in this
9 particular survey?

10 A. I was contacted by the National Conference of Black
11 Lawyers.

12 Q. And did you work with Mr. Lumumba in that regard
13 and Mr. Freelon?

14 A. No.

15 Q. You didn't work with them at all. Did they
16 contact, did they ever contact you regarding this particular
17 case?

18 A. Yeah, they have contacted me regarding the case in
19 particular, yeah.

20 Q. Well, they had to contact you to get you up here
21 today?

22 A. Right.

23 Q. And you provided these surveys to them?

24 A. Right.

25 Q. So somehow you became interested in the Flowers
26 case to come to Lee County, did you not?

27 A. Oh, yes. Yeah.

28 Q. Okay, and that was at Mr. Lumumba's involvement?

29 A. No, sir--

1 Q. You don't know that one way or another. You do not
2 know that one way or another?

3 A. Yes, I do--

4 BY MR. LUMUMBA: --Excuse me; excuse me. He
5 is drowning out the answer of the witness. The
6 witness is saying, "No, sir," and "No, sir," and he
7 won't let him finish.

8 BY MR. HORAN: He appears perplexed.

9 BY MR. LUMUMBA: Well, why don't you let the--
10 well, sir--

11 BY THE COURT: --None of y'all can speak at
12 the same time--

13 BY MR. LUMUMBA: --when you finish your class
14 at the University of Mississippi, then you come in
15 here and call this man--

16 BY THE WITNESS:

17 A. I know how I got involved in the case, and I know
18 that it wasn't at the behest of Attorney Lumumba.

19 Q. Okay, that is my question. You did not get
20 involved through his office?

21 A. No, I did not.

22 Q. Now you interviewed approximately fifteen people
23 yourself?

24 A. Yes, I did.

25 Q. At it's your testimony on direct examination that
26 two of those people hadn't even heard about the case?

27 A. Yes.

28 Q. Is that right?

29 A. That's right.

1 Q. Two of the people you interviewed out of
2 approximately fifteen people just here in Tupelo. You didn't
3 go to Nettleton, did you?

4 A. (Witness shakes his head.)

5 Q. You didn't go to Shannon?

6 A. Uh-uh.

7 Q. You didn't go to Baldwyn. You didn't go to the
8 other 25 or 30 small communities. You were right here in
9 Tupelo; right?

10 A. Right.

11 Q. You didn't go to those other communities?

12 A. No. Some of them--

13 Q. --And two of the fourteen that you have provided
14 here hadn't even heard about the case?

15 A. That's what they said.

16 Q. And another four didn't have an opinion as to
17 whether or not he was guilty or not?

18 A. (Witness shakes his head.)

19 Q. You said ten of the fourteen, or maybe those two
20 are included. Four didn't have an opinion?

21 A. Right, part of the same. Two didn't even hear
22 about it, so they couldn't and two more had no opinion.

23 Q. Right. So four out of the fourteen didn't have an
24 opinion?

25 A. Well, actually, that is the correction. One had an
26 opinion, but we didn't get it documented. They said yes,
27 they had an opinion, but we didn't get it documented. So I
28 didn't count that one.

29 Q. So you didn't document that on that survey?

1 A. Well, ten had the opinion that the Defendant was
2 guilty.

3 Q. Now this survey is not scientific, is it? This is
4 not a scientific survey?

5 A. I mean--

6 Q. I mean my question to you--

7 A. --I think it was scientific, yeah. I talked to
8 people. It's a survey. It's just like a Gallup Poll or a
9 CNN poll. You take a representative of the community and ask
10 them questions.

11 Q. My question is it's not scientific to the extent
12 that you have provided any statistical analysis of what you
13 got?

14 A. Again, in my testimony I am providing statistical
15 analysis. I am telling you--

16 BY MR. LUMUMBA: --Excuse me; excuse me,
17 Judge. If he-- objection. I have got a calculator
18 here if we want to figure out what percentage of
19 people--

20 BY MR. HORAN: --Well, we can't because we
21 only have fourteen of them, Your Honor. We don't
22 have the whole hundred. We only have fourteen of
23 them.

24 BY MR. LUMUMBA: Well, we will make--

25 BY MR. HORAN: --he is saying mostly--

26 BY MR. LUMUMBA: --No, no, no--

27 BY MR. HORAN: --I am just asking him--

28 BY MR. LUMUMBA: --That is not proper.

29 BY THE COURT: --The question is asked and

1 answered already.

2 BY MR. LUMUMBA: We will make all 75
3 available. That is not--

4 BY MR. HORAN:

5 Q. --We don't have all the surveys, do we?

6 A. Not right there, no.

7 Q. But your testimony here today to this Court is just
8 mostly what people told you, and their response were mostly
9 this and mostly that?

10 A. Over 75 percent. If you want to hear a figure, it
11 was over 75 percent that felt that the Defendant did the
12 crime.

13 Q. Do you have any idea how many people are registered
14 to vote in Lee County?

15 A. No, sir.

16 Q. Would you be surprised if it's probably around
17 50,000 people in this county, and you interviewed a hundred
18 of them?

19 A. I wouldn't be surprised.

20 Q. And you interviewed less than one percent of the
21 electorate?

22 A. If that's your testimony. I wouldn't be surprised.

23 Q. But you are saying y'all interviewed no more than a
24 hundred?

25 A. And I also said that the survey is ongoing, so at a
26 later day we can give you more figures, I am sure, if you
27 want--

28 Q. --Okay, but you are going to continue to stop
29 people on the streets here in town and ask them and bring to

1 their attention that the Flowers case is going to be tried
2 here in some instances? Is that your testimony?

3 A. We don't seek to bring attention to anything except
4 to the extent that we might as the Grassroots Movement or the
5 Mississippi Coalition for Justice have a press conference
6 about what has been going on in the trial or anything like
7 that.

8 Q. Okay, now are you doing surveys in any other parts
9 of the state at this time?

10 A. We are only conducting them in Lee County.

11 Q. In Lee County, this trial. Do y'all not have any
12 other interests in any other trials in the state other than
13 this particular trial?

14 A. Well, first of all--

15 Q. --Answer my question yes or no.

16 A. I am answering your question.

17 BY MR. HORAN: Your Honor, I would like for
18 him to answer yes or no.

19 BY THE COURT: Wait a minute, Mr. Horan. You
20 may--

21 BY THE WITNESS:

22 A. --The Malcolm X Grassroots Movement is a national
23 organization as well as the Mississippi Coalition for
24 Justice. We work on projects like this in other states. We
25 work on projects like this in other cities, and I don't
26 necessarily know what other people are working on. So I
27 can't say-- I know the work that I am doing.

28 Q. To your knowledge, are y'all doing any work on any
29 other trials in the State of Mississippi at this time?

1 A. Me, no. I can't do that much work, but the Malcolm
2 X Grassroots Movement Chapter and the Mississippi Coalition
3 for Justice Chapter, I am sure they are doing some other work
4 on other cases where they perceive injustice or wrong being
5 done. That is part of our commitment as a public interest
6 organization; yes, sir.

7 Q. And you came up here one day, the 29th of August;
8 is that correct?

9 A. Personally I did, yes.

10 Q. And you had three other workers; is that right,
11 three other workers came up?

12 A. Yes, sir.

13 Q. Did they come up on the same date or different
14 dates?

15 A. We came up together that day.

16 Q. Do you converse with them on a regular basis?

17 A. Weekly.

18 Q. You talk to them about what they are doing?

19 A. Right.

20 Q. To your knowledge, are they working on any other
21 trial in the State of Mississippi at this time other than
22 this particular case?

23 BY MR. LUMUMBA: Objection. It's irrelevant,
24 Judge.

25 BY THE COURT: It has already been asked and
26 answered. Let's move on.

27 BY MR. HORAN:

28 Q. To your knowledge, are they--

29 BY THE COURT: --Sustained. The objection is

1 sustained.

2 BY MR. HORAN: Your Honor, I haven't asked him
3 that particular question.

4 BY THE COURT: Well, let's move on.

5 BY MR. LUMUMBA: Judge, I withdraw my
6 objection. If he wants to know that, let him
7 answer that.

8 BY MR. HORAN: It goes to his bias, Your
9 Honor, his interest and bias as to why they are up
10 here on this particular case--

11 BY MR. LUMUMBA: --I withdraw my objection.

12 BY MR. HORAN:

13 Q. To your knowledge, are they working on any other
14 cases?

15 A. They have worked on other cases. To my knowledge,
16 I don't know if they are working on other cases now or not.

17 Q. At this time? Your testimony here on direct and
18 cross-examination is that y'all conducted this survey in
19 Tupelo, in the City of Tupelo, in this particular, in this
20 area?

21 A. In Tupelo, yeah.

22 Q. Did you go-- were you on Main Street? Did you go
23 to people's residences?

24 A. No, sir. We were on Main Street. We were on
25 Gloster. I think that's what it is called.

26 Q. Heavily traveled streets here in town?

27 A. Yes, sir.

28 Q. Okay, and it's your testimony that you made no
29 effort to go to Nettleton or Shannon or any other community

1 to talk to some of the other 50,000 voters?

2 A. Not that I did, no, sir.

3 BY MR. HORAN: No further questions.

4 BY MR. LUMUMBA: Let me ask just a couple of
5 questions in redirect.

6 REDIRECT EXAMINATION BY MR. LUMUMBA:

7 Q. The survey asked, "Do you live in Lee County," and
8 "Do you work in Lee County?" Is that correct?

9 A. Yes, it does.

10 Q. Okay, so, in fact, these people could have lived
11 anywhere in Lee County; is that correct?

12 A. Yes, sir.

13 Q. Okay, and do you know whether or not Tupelo is the
14 county seat, the place where the courthouse is and all that?

15 A. I know this is the center of activity, so we came
16 here.

17 Q. Did you have any reason to believe that people from
18 other parts of the county would not come to Tupelo?

19 A. No, I don't.

20 Q. Okay, now let me ask you, ask you about working on
21 other cases. Are you familiar with case of John Buford
22 Erving?

23 A. Yes, I am.

24 Q. Has the organizations which you referred to done
25 work on that case?

26 A. Yes, they have.

27 Q. Are you familiar-- is that in Mississippi?

28 A. That's in Mississippi.

29 Q. And where, what county was that in?

1 A. He was in Parchman. I think that was in Pontotoc.

2 Q. Pontotoc. Okay, have you ever heard of a case of
3 Christopher Marshall which was tried in Batesville,
4 Mississippi?

5 A. Yes, I have.

6 Q. And are you familiar with the fact that that arose
7 in Senatobia, up in--

8 A. At the Batesville area.

9 Q. Yeah, well, in Batesville, Mississippi.

10 BY MR. HORAN: Your Honor, I object to the
11 line of questioning. I asked him what he was
12 currently working on. I did not go into anything
13 he worked on in the past. It's outside the scope
14 of cross.

15 BY MR. LUMUMBA: Well, not really, Judge,
16 because if he is trying to reflect biases if
17 somebody is just coming up here to jump on his
18 case, I think that--

19 BY MR. HORAN: --I will withdraw. If it's
20 that important to him, I will withdraw.

21 BY THE COURT: Well, but you didn't ask him
22 whether he was involved with that case in Senatobia
23 or Batesville. You asked him had he heard of it.

24 BY MR. LUMUMBA: Pardon?

25 BY THE COURT: You asked him had he heard of
26 it.

27 BY MR. LUMUMBA: Oh, okay.

28 BY MR. LUMUMBA:

29 Q. Have you been--

1 A. --Yes, we were.

2 Q. Were you or other people that you work with
3 involved in that case?

4 A. Other people in the Mississippi Coalition for
5 Justice as well as other people in Malcolm X Grassroots--

6 Q. Have you heard of the case of Andre Jones, the
7 death of Andre Jones down in Simpson County?

8 A. Yes, sir. We have.

9 Q. Okay, are the Mississippi Coalition for Justice
10 involved in work on that case?

11 A. Currently, we are.

12 Q. Okay. Now you have heard of the case of Elliott
13 Coke from Holmes County?

14 A. Yeah, Elliott Coke.

15 Q. And was any work done on that case?

16 A. Yes, it was.

17 Q. By your organization?

18 A. Yes, it was.

19 Q. Okay. You have heard of the case in Oktibbeha
20 County of Boyd.

21 A. Dwayne Boyd?

22 Q. Dwayne Boyd; right.

23 A. Yes, I heard of that.

24 Q. Was work done on that case?

25 A. Yeah, we worked on that case. I didn't necessarily
26 personally go.

27 Q. Now just to, what time did you come up here in the
28 morning? What time did you leave to come up here about?

29 A. 7:00 or something like that.

1 Q. Okay, and when you left, did you forget anything?

2 A. I mean I didn't have all of the surveys with me
3 because some of my other workers had some of them.

4 Q. Can you make the other surveys available?

5 A. Yes, sir.

6 Q. If they really want to see them?

7 A. Yes, I can.

8 Q. Okay, were the surveys, and so were those surveys
9 consistent--

10 A. --Yes, they were.

11 Q. --percentage-wise with those there?

12 A. Yes, they were.

13 BY MR. EVANS: For the record, Your Honor, any
14 that have names on them, we would like to see them.

15 BY MR. LUMUMBA: Those have the names on them,
16 some of them. Do you want to call these people?
17 They are here.

18 BY THE COURT: Any further questions of him?

19 BY MR. LUMUMBA: We don't have any other
20 questions.

21 BY THE COURT: Is he finally excused?

22 BY MR. LUMUMBA: Yes, sir. He is excused.

23 BY THE COURT: Mr. Muhammad, you are free to
24 go.

25 WITNESS EXCUSED.

26 BY MR. LUMUMBA: Judge, I would like before we
27 end here today if I can have a chance to get copies
28 of these?

29 BY THE COURT: Yes, sir. You can do that.

1 BY MR. LUMUMBA: I appreciate it. I would
2 like also just a moment of the Court's time to
3 check and see. I may have one final witness.

4 BY THE COURT: All right, sir.

5 (Mr. Lumumba left the courtroom briefly.)

6 (UPON HIS RETURN, A VIDEOTAPE WAS MARKED AS
7 DEFENDANT'S EXHIBIT "F" TO THE MOTION FOR CHANGE OF
8 VENUE.)

9 BY MR. LUMUMBA: We have asked to be received
10 into evidence a videotape of footage from WTVA
11 television, and in addition to-- and that is here
12 in Tupelo. And we have, which more or less
13 corresponds with information on this tape, Exhibit
14 "B" which is in evidence already or I believe. I
15 move for admission of Exhibit "B." I don't know
16 whether it's in evidence or not.

17 BY THE COURT: What is Exhibit "B"?

18 BY MR. LUMUMBA: Exhibit "B" is what they call
19 the script. In other words, this is what--

20 BY THE COURT: --basically what is on the tape,
21 you are saying?

22 BY MR. LUMUMBA: Yeah. See, it wouldn't be
23 everything on the tape. It's like what the anchor
24 person reads.

25 BY MR. HORAN: Off the roll?

26 BY MR. LUMUMBA: Yeah. And then what, and
27 then, you know, the person on the scene who is
28 handling it every day, you know, that is on the
29 tape also.

1 BY THE COURT: What is the date?

2 BY MR. LUMUMBA: The date, there is several
3 different dates on here. They stem all the way
4 from 7/16/96 to the end of the trial which I
5 believe is October 18, '96.

6 BY THE COURT: Okay.

7 BY MR. LUMUMBA: October 18, '97.

8 BY THE COURT: All right, any objection?

9 BY MR. HORAN: No, sir.

10 BY THE COURT: Let them be marked. Let her
11 mark--

12 BY MR. HORAN: --We request that they be.

13 BY THE COURT: Have you marked them?

14 BY THE COURT REPORTER: Yes, sir.

15 BY MR. HORAN: Has she already marked them?

16 BY THE COURT: Okay, they are admitted.

17 BY MR. HORAN: I would like for-- as a matter
18 of being like we have done in the past, make the
19 roll be an "A" exhibit to the tape.

20 BY THE COURT: Yeah, we can do that. What is
21 the number on--

22 BY MR. LUMUMBA: This is "B."

23 BY THE COURT: That is "B."

24 BY MR. LUMUMBA: And this is "F."

25 BY MR. HORAN: Well, it is too late now.

26 BY THE COURT: Okay, that will work. Let the
27 record reflect that Exhibit "B" is the text or
28 closely the text of what is on or in Exhibit "F."
29 Is that right?

1 BY MR. LUMUMBA: Yeah, that is true. Now you
2 may find a couple of--

3 BY THE COURT: --I understand it may not be
4 exactly the same.

5 BY MR. LUMUMBA: They may have come up with
6 one thing on the video that they couldn't find the
7 tape.

8 BY MR. EVANS: Your Honor, if we don't know
9 for sure, why don't we just introduce the tape and
10 leave the transcript out if we don't know if that's
11 what is on the tape or not because I don't think
12 anything--

13 BY THE COURT: It's just for my
14 consideration. It is okay. We will let it in.

15 BY MR. LUMUMBA: It doesn't matter to me, but
16 I offer them for the Judge so he can maybe look at
17 them and doesn't have to look at the tape every
18 time he wants to think about something. So this
19 is-- I would move for the admission of all the
20 exhibits that I have put before the Court on this
21 issue, and that is Exhibit "A" which are--

22 BY THE COURT: They are already admitted.

23 BY MR. LUMUMBA: Already admitted, I think,
24 okay. All of these are admitted; right?

25 BY THE COURT: All your newspaper articles are
26 admitted, and your tape is admitted, and I have
27 admitted Mr. Muhammad's document.

28 BY MR. LUMUMBA: Questionnaires, okay. So I
29 think that is all the evidence that we have. I

1 will put this tape in a box. We are, we do have a
2 video, a VCR and a monitor down in my car, and we
3 would offer to show it, the Court the opportunity
4 to look at it the first time with the rest of us,
5 but that is up to the Court, however he wants to do
6 it. But we are in a position where we could play
7 it.

8 We had one other witness who they were
9 checking on, a Mr. Stanphill. Can I inquire to the
10 Court and inquire of the State if they have any
11 other witnesses?

12 BY MR. EVANS: We do.

13 BY MR. LUMUMBA: You do? Can I ask that they
14 proceed, and then we will let you know whether
15 Stanphill is coming or not? He had another trial
16 he was participating in.

17 BY THE COURT: I will let you call him out of
18 order.

19 BY MR. LUMUMBA: Okay, all right.

20 BY MR. EVANS: We would call Sheriff Presley
21 at this time, Your Honor.

22 BY MR. HORAN: Your Honor, also I think the
23 Clerk has a VCR and TV upstairs, do you not?

24 BY THE CLERK: We have one here.

25 BY MR. HORAN: In the grand jury room.

26 BY THE COURT: Sheriff, come around and be
27 sworn, please, sir.

28 HAROLD RAY PRESLEY,
29 a white male called to testify as a witness by the State on

1 the Defendant's Motion for Change of Venue, having first been
2 duly sworn, testified as follows, to-wit:

3 **BY THE COURT:** State your name for the record,
4 please.

5 **BY THE WITNESS:** Sheriff Harold Ray Presley.

6 **BY MR. EVANS:** May I proceed, Your Honor?

7 **BY THE COURT:** Yes, sir.

8 DIRECT EXAMINATION BY MR. EVANS:

9 Q. Sheriff Presley, how long have you been in law
10 enforcement?

11 A. Ten years.

12 Q. And how long have you lived in Lee County?

13 A. All my life.

14 Q. All right, Sheriff. As being Sheriff, you are
15 familiar with this case against Curtis Flowers; is that
16 correct?

17 A. Yes, sir.

18 Q. And do you, I assume as being an elected official,
19 get out in the community and see people pretty regularly?

20 A. Yes, sir.

21 Q. Also because of the nature of your job, you get out
22 and talk to people all over the county; is that right?

23 A. Yes, sir.

24 Q. Sheriff, do you know of any sentiment in the
25 community that would make it to the point that this community
26 for any reason is unduly interested in this Flowers case?

27 A. No, sir.

28 Q. Did you pretty well read the articles that were in
29 the newspaper when this trial happened before?

1 A. I, when it first came out I, you know, did, and
2 then I sort of tapered off on them. I didn't, you know--

3 Q. All right, Sheriff, as far as your personal
4 beliefs, your opinions from, of the people in this community,
5 do you feel that the people of Lee County could give Curtis
6 Flowers a fair trial and base their decisions on guilt or
7 innocence on the evidence that they heard on the witness
8 stand?

9 A. Yes, sir; I do.

10 Q. Have you heard any uproar in the community about
11 any groups that are doing a lot of talking about the case or
12 even care one way or the other as far as the facts of the
13 case?

14 A. I haven't heard any.

15 Q. And it's your belief that Curtis Flowers could get
16 a fair trial in Lee County?

17 A. Yes, sir; I do.

18 BY MR. EVANS: I will tender the witness, Your
19 Honor.

20 CROSS-EXAMINATION BY MR. LUMUMBA:

21 Q. Sheriff, how long have you been in law enforcement?

22 A. Ten years.

23 Q. Ten years?

24 A. Yes, sir.

25 Q. Okay, you have been in law enforcement as the
26 Sheriff for that long?

27 A. No, sir. I am in my sixth year as Sheriff.

28 Q. What were you before that?

29 A. I'm sorry. I'm in my fifth year as Sheriff.

1 Q. Okay.

2 A. I worked in the grocery business.

3 Q. Okay, and Sheriff, so you, I assume that you are
4 involved in investigating and prosecuting crimes which occur
5 in Lee County?

6 A. I don't do the investigations on it. I have an
7 investigator to do-- you know, we will go out together. I
8 work mostly with narcotics people. We go out and work
9 narcotics. I don't work the cases for them. I help search,
10 stuff like that.

11 Q. Okay, but basically your job is to-- you are
12 involved with law enforcement; is that correct?

13 A. Yes, sir.

14 Q. And I mean most people when they have a job often
15 have, you know, their perceptions of things are to some
16 extent affected by what they do; right?

17 A. I, I guess.

18 Q. Well, I mean what do you think, Sheriff? I'm not
19 trying to put words in your mouth.

20 A. Well--

21 Q. You have been an officer for ten years. You think
22 that doesn't affect the way you think?

23 A. No, sir.

24 Q. It doesn't affect the way you think?

25 A. No, sir. You know, I go out and look for the, you
26 know, the evidence. I don't--

27 Q. Well, no, I'm not saying you don't look for
28 evidence. But what I'm saying is that you respect the work
29 of other law enforcement officers?

1 A. Yes, sir; I do.

2 Q. Okay. And if you were sitting on a jury and you
3 were asked this question, to look, Sheriff, if an officer was
4 to testify about something--

5 BY MR. EVANS: Your Honor, that is not
6 relevant to what that motion is on.

7 BY THE COURT: How is it relevant?

8 BY MR. LUMUMBA: I will move on.

9 BY MR. LUMUMBA:

10 Q. You would agree that-- have you ever had any--
11 well, when the case came here last time and it was tried, did
12 you have any contact with any of the officials who were
13 trying the case?

14 A. No, sir. My chief deputy handled all that, the
15 security.

16 Q. Okay, and you assigned him to the case; is that
17 correct?

18 A. Sir?

19 Q. You assigned him to the case?

20 A. Yes, sir.

21 Q. All right. Did you ever talk with him about what
22 he was doing?

23 A. No, sir. At times I was seeing him. He would say
24 they would go to the motel room at night or something like
25 that, you know.

26 Q. So has anybody ever told you-- would you be-- it
27 would be safe to say that you are aware that the case has
28 been tried in Lee County once before; right?

29 A. Yes, sir.

1 Q. You are aware of the fact that he has been found
2 guilty and sentenced to death?

3 A. Yes, sir.

4 Q. You are aware of the fact that most of the people
5 in this community would be aware of that too; right?

6 A. I don't know. I don't, I couldn't answer that.

7 Q. Well, is there a paper here?

8 A. Yeah.

9 Q. Did the paper carry it?

10 A. Yeah, but there is a lot of people that don't read
11 papers either, you know.

12 Q. Well, I haven't finished yet. Did the paper carry
13 it?

14 A. Yeah.

15 Q. In fact, did they carry it every day of the trial?

16 A. What now?

17 Q. Every day of the trial?

18 A. I am sure they did.

19 Q. Sometimes they had big headlines, Flowers
20 Convicted, Sentenced to Death; right?

21 A. I guess. I don't know. It done passed. I don't
22 remember seeing it. I remember seeing it, but I don't
23 remember what it said.

24 Q. Did the TV carry it?

25 A. I am sure they did.

26 Q. Did they have all in there what was going on at the
27 trial?

28 A. I am sure they did.

29 Q. Okay. And so have you talked to anyone who

1 expressed an opinion about the case?

2 A. No, sir. I have not.

3 Q. So nobody has ever told you they wouldn't--

4 A. Nobody what now?

5 Q. No one has ever told you they wouldn't be biased
6 against Mr. Flowers; is that correct?

7 A. No, sir. Ain't nobody, I never spoke to anybody
8 about the trial.

9 Q. And having-- knowing what you know and if you were
10 here to actually being asked by the Judge yourself if you
11 could be totally fair and impartial -- now being fair and
12 impartial in this case, what would that mean? Would that
13 mean--

14 BY MR. EVANS: --Your Honor, that is not the
15 question we are here on today. This is a law
16 enforcement officer, chief law enforcement officer
17 in this county. He is only here for the purpose of
18 the change of venue motion to be asked his opinion
19 of whether the people in this county could be fair
20 and impartial.

21 BY THE COURT: That is true. Sustained.

22 BY MR. LUMUMBA:

23 Q. So no one has told you they could be fair and
24 impartial?

25 A. Nobody has told me anything about the case; no,
26 sir.

27 Q. They haven't told you they could be fair and
28 impartial?

29 A. No, sir. Nobody ever told me nothing about the

1 case.

2 Q. And you never asked anybody about it?

3 A. No, sir.

4 Q. I see. But you know it has been the subject of
5 publications in this county?

6 A. Yes, sir.

7 Q. And a lot of publicity has been on this issue in
8 this county; isn't that correct?

9 A. What now?

10 Q. At the time of the trial there was a lot of
11 publicity around this case. Isn't that true?

12 A. Yes, sir. I am sure there was.

13 Q. So not having talked to anybody about this, you
14 really can't express the opinion of a person that has never
15 expressed it to you; right?

16 A. No, sir. But I believe that--

17 Q. --Listen to my question.

18 A. --a person is going to--

19 Q. --Listen to my question. Can you give us the
20 opinion of a person who has never told you what their opinion
21 was?

22 A. I can't give you an opinion because I wouldn't know
23 what somebody else thinks.

24 BY MR. EVANS: Object, Your Honor. He has
25 been asked his personal opinion, not the opinion of
26 other people.

27 BY MR. LUMUMBA: Which, Judge, I would ask be
28 stricken because that is absolutely worthless. I
29 mean unless, unless he is called as a juror himself

1 -- they are going to complain about 15 different
2 people who have personally been interviewed which
3 is consistent with 75 people and then actually have
4 the nerve to tell this Court that we should
5 consider the opinion of one person when you have
6 got, you have got 75 people who have been
7 interviewed, and they have contrary opinions? I
8 mean obviously, I should be able to ask questions
9 to see if his opinion is based on anything other
10 than his own personal perceptions as a Sheriff.

11 **BY THE COURT:** You can ask what his opinion is
12 based on.

13 BY MR. LUMUMBA:

14 Q. So if someone was to tell you hypothetically, which
15 we have had evidence to support this-- do you know, by the
16 way, who Walter Stanphill is?

17 A. I have heard the name.

18 Q. Works for Legal Services?

19 A. Yes, sir.

20 Q. Okay. If somebody was to tell you that he had an
21 opinion on the case, that wouldn't surprise you, would it?

22 BY MR. EVANS: Your Honor, I object again. We
23 are going through the same thing. This has nothing
24 to do with this witness. It is not relevant to his
25 testimony.

26 **BY THE COURT:** It sure doesn't. That is
27 sustained.

28 BY MR. LUMUMBA: Yes, Judge. I have nothing
29 else of this witness.

1 BY MR. EVANS: Very briefly, Your Honor.

2 BY MR. LUMUMBA: Excuse me a second.

3 REDIRECT EXAMINATION BY MR. EVANS:

4 Q. Sheriff, would it be true that you talk with people
5 in the community about their interests every day?

6 A. Yes, sir; I do.

7 Q. And this topic has never come up when you were
8 around people talking with them as far as any interest that
9 they had in this case?

10 A. No, sir.

11 Q. And that's all over Lee County?

12 BY MR. LUMUMBA: Objection. He is leading his
13 own witness.

14 BY THE COURT: Sustained. Sustained as to
15 leading. Rephrase your question.

16 BY MR. EVANS:

17 Q. What area would that be in? What parts of Lee
18 County?

19 A. That I work? I mean--

20 Q. Yes, sir.

21 A. The whole county.

22 BY MR. EVANS: Nothing further, Your Honor.

23 BY THE COURT: Is he finally excused?

24 BY MR. EVANS: Yes, sir.

25 BY THE COURT: Sheriff, thank you.

26 WITNESS EXCUSED.

27 BY THE COURT: Who will you have next?

28 BY MR. EVANS: Your Honor, at this point-- we
29 took this witness out of turn. It's the Defense is

1 still going. I mean yeah, the Defense is still
2 going forward.

3 **BY THE COURT:** Well, my understanding was they
4 hadn't determined whether or not that man is going
5 to be here to testify, and that y'all were going to
6 go forward and put yours on, and then I would let
7 them take that out of turn if they--

8 **BY MR. EVANS:** As far as I know, that is all
9 we are going to have. That's all we anticipate
10 having at this point. Of course, it may depend on
11 what else they put on.

12 **BY MR. LUMUMBA:** Judge, let me just say then
13 if that's their position at this time, what I would
14 request the Court's permission to do is to play the
15 tape now, and then if our other witness can be
16 here, and he was, I will say he was subpoenaed.
17 But also, it was late notice, and he did tell me he
18 was working on another case for Legal Services. So
19 I would like to play the tape, and then if he is
20 going to show, we will put him on first thing after
21 lunch.

22 **BY THE COURT:** We are going to get through
23 with this motion before anybody gets to lunch,
24 including the Judge.

25 **BY MR. LUMUMBA:** Okay, all right.

26 **BY THE COURT:** Have you got a VCR?

27 **BY THE CLERK:** Let me see. The grand jury is
28 back there. Let me see what we can work out.

29 **BY THE COURT:** We will take a short break

1 until she gets it.

2 (FOLLOWING A BRIEF RECESS ON SEPTEMBER 2,
3 1998, THE HEARING CONTINUED WITH ALL COUNSEL AND
4 THE DEFENDANT PRESENT AS FOLLOWS:)

5 BY THE COURT: I am ready if y'all are.

6 BY MR. HORAN: Push the play button.

7 BY MR. LUMUMBA: Can you see it?

8 BY THE COURT: Yes, sir.

9 BY MR. HORAN: Top right; right there in the
10 circle.

11 (THE VIDEOTAPED MARKED AS DEFENDANT'S EXHIBIT
12 "F" WAS PLAYED IN OPEN COURT SHOWING SCENES FROM
13 TARDY FURNITURE STORE, INTERVIEW WITH SAM JONES,
14 MAYOR SIMMONS, POLICE CHIEF JOHNNY HARGROVE, AND
15 VARIOUS NEWS REPORTS DURING THE TRIAL.)

16 (TAPE WAS PLAYED THROUGH SEVERAL REPORTS UNTIL
17 THERE WAS THE FOLLOWING:)

18 BY THE COURT: Is there supposed to be talking
19 now?

20 BY MR. EVANS: Apparently this is footage that
21 they copied but never showed on TV.

22 BY THE COURT: They didn't? Okay.

23 (THAT WAS FOLLOWED BY THE SHOWING OF MORE NEWS
24 ACCOUNTS CONCERNING THE TRIAL AND CONCLUDED WITH
25 THE FOLLOWING:)

26 BY MR. LUMUMBA: So Judge, that is Exhibit
27 "F."

28 BY THE COURT: All right, sir.

29 BY MR. LUMUMBA: We don't have any other

1 witnesses at this time. What we would move this
2 Court to do is to continue this hearing to a day
3 next week. Several of our witnesses were unable to
4 make it today. They had prior commitments, and we
5 probably have another half an hour to an hour worth
6 of testimony. Plus there is a tape which is being
7 sent to us from the Columbus station which also
8 shows footage here in Jackson-- in Tupelo, I'm
9 sorry. And we would like to enter that into
10 evidence, and we would like to enter into evidence
11 the remainder of the surveys. So I would ask the
12 Court to continue this matter for that amount of
13 time and then take up some evidence.

14 I think as the Court has already reflected on
15 and said that the issue of change of venue is
16 always an active issue up to and including the
17 selection of the jury process. So I would like to
18 have that opportunity to do so. I would be
19 prepared at this time to submit an argument on the
20 evidence to this point and then to let the other
21 evidence be submitted without argument at such time
22 as the date and time that this Court should
23 designate. That is our, and that is my position at
24 this time.

25 **BY THE COURT:** Okay. The Court has no time to
26 hear this matter any further before the trial of
27 this case, and you should have had those witnesses
28 here today. So that part of the motion is
29 overruled. I will hear from you on your motion

1 though.

2 BY MR. LUMUMBA: Well, regardless of whether
3 the Court receives our exhibits or not, we are
4 certainly going to submit them to the Court because
5 my understanding of the law is that anything which
6 bears upon the jurisdiction is certainly
7 significant up until and including the date of
8 trial but--

9 **BY THE COURT:** You may be right, and I may let
10 those in. I'm just saying I'm not going to have
11 another evidentiary hearing between now and the
12 time of trial.

13 BY MR. LUMUMBA: All right. Well, we will
14 submit affidavits to the Court. Let me say this,
15 is that we have seen voluminous publicity. If you
16 take the culmination of exhibits which we have
17 presented into evidence; we have papers, The
18 Clarion Ledger, and I think that was in the first
19 set of exhibits that we called Exhibits in Support
20 of Motion for Change of Venue. Many Clarion Ledger
21 articles that talk about the case, the
22 investigation of the triple slaying, the arrest of
23 Curtis Flowers, the trial itself, I think this
24 paper covers, The Clarion Ledger actually covers
25 when Flowers was arrested. It understandably
26 covers sentimental things and emotional, the
27 emotions of the community which rightfully was very
28 emotionally shocked by the killings, Winona dealing
29 with the shock of the slayings.

1 In the publicity on TV as well as in the
2 newspaper, early on there was speculation about a
3 disgruntled employee could have been involved, and
4 then they have a year later in The Clarion Ledger
5 and the other papers a remembrance of the event;
6 that would have been about July of 1997. You had
7 when Curtis Flowers was arrested in Texas. They
8 say "captured in Texas." Despite the fact he
9 wasn't running from anybody and despite the fact
10 that he was living very visibly and they didn't
11 have to put it on America's Most Wanted or send the
12 people out to search for him, and he came home
13 about every other weekend, they say captured in
14 Texas.

15 And then they say ex-employee held in Winona
16 slayings. They go on to give the theory about why
17 he is guilty; police making all kinds of statements
18 about what he is supposed to have done, didn't do.
19 That was in the Ledger. That was in the Memphis
20 paper, The Commercial Appeal. That was in the
21 local paper, the Tupelo Daily Journal as well as
22 the-- well, it is now called the Northeast
23 Mississippi Daily Journal. It talked about the
24 jury selection, and then we get off into the trial
25 itself. The prosecution's statements and big
26 headlines, "Defendant killed Winona Store Owner,
27 Three Others for Revenge, Prosecutor Says."
28 Interestingly enough, there is never any headlines
29 about what the defense attorney said.

1 "Flowers Admits to Slayings, Inmates Say" and
2 I will return to that. That is the next headlines,
3 and that is consistent with the other headlines in
4 other papers which continued to be put upon the
5 community here. Witnesses say she saw Flowers
6 leaving the Winona murder scene.

7 Then Flowers, the only headline that we have
8 got out of all these papers that said anything
9 about Flowers and suggested that he may not be
10 guilty was "Flowers Denies Shooting, Killing Winona
11 Store Owner." That headline is buried amongst all
12 the others, tested immediately in the other part of
13 the article headline, "Test Reveals Gun Residue."
14 They don't say that it is infinitesimal and you
15 probably couldn't see it, that it is difficult to
16 see with a microscope.

17 But then they go on to say "Jury Orders Death
18 Penalty for Flowers." They talk about the
19 conviction and the sentence, and I'm not going to
20 go through all these, every paper, but essentially
21 that's what they say in all the papers. They go
22 through this in great detail. They highlight the
23 evidence with great detail, and of course, the
24 State knows when it decides to try a person four
25 different times for the same acts, even though they
26 arise out of the same event, it should have been
27 tried in one case, which we have already
28 discussed. It has to take whatever legal
29 consequences, you know, occurs because of that.

1 And what the legal consequence of the trial in this
2 case in this community is, is that this community
3 is incapable of sitting down and giving this a fair
4 hearing.

5 The law is, for those in the courtroom who
6 don't remember it, and I can understand why a lot
7 of people might forget because when you are
8 personally involved, and all of us have been
9 personally affected from time to time--

10 BY MR. EVANS: --Your Honor, I object, and I
11 am tired of these sly comments reflected to me. I
12 don't know about the ones to the Court, but I'm
13 tired of the ones reflected to me. If he cannot
14 address me with respect, he doesn't need to be up
15 here talking.

16 BY MR. LUMUMBA: Well, I give respect to
17 people who earn it but--

18 BY MR. EVANS: --Your Honor--

19 BY MR. LUMUMBA: --secondly--

20 BY THE COURT: --Look, look--

21 BY MR. EVANS: --That's exactly what I'm
22 talking about right there, and I'm tired of it--

23 BY MR. LUMUMBA: --Okay, you know, let me
24 finish this. First of all, I wasn't talking about
25 him, so I don't even know what he is talking about,
26 but since he wants to talk about respect--

27 BY THE COURT: --Well, I don't want either one
28 of you to talk about it. What I want you to do is
29 go on with your argument.

1 BY MR. LUMUMBA: Okay, that's what I am trying
2 to do. Okay, so we can understand the emotional
3 trauma that people go through, but we have to
4 withdraw from that trauma for a period of time, and
5 we have to to say to ourselves that first of all,
6 the law does say that a person is presumed innocent
7 until proven guilty.

8 Now in this county to make that statement
9 about this case is, it creates an oxymoron. It
10 creates a contradiction in the various statement
11 itself with the facts and the circumstances which
12 surround this situation. What I am saying to the
13 Court is, is that he has already been found
14 guilty. He has already been sentenced to death.
15 People don't make the separation that the
16 prosecution tries to make between the different
17 deaths. All the evidence talks about the same gun
18 being used, the same bullets being used, the same
19 incident. There is only one person charged with
20 all the crimes. All the evidence that is going to
21 come in this case came in the last trial. It's the
22 same thing. And you have got people reading
23 headlines, headlines which for this trial really
24 are very misleading, but they have read it. It is
25 sunk into their memory.

26 Suspects, inmates say suspect confesses. Now
27 we know that the same people who said that have
28 now, one of them has been on the stand under oath
29 and stated that he lied. He lied because these

1 people here offered him thirty thousand dollars.
2 We have a statement from another person who now
3 says he lied. So the people they were talking
4 about have now changed their statements. But how
5 is this jury and these people coming from this
6 community going to be expected to come in here with
7 a clean slate, with a clean mind, with a clean--
8 all we are asking for is a fair trial.

9 If you give us a fair trial, we will do the
10 rest. All we are asking this Court for is to give
11 us a fair trial. We are asking for it not to give
12 us the age old Mississippi justice. Give us the
13 justice which we deserve as a human being. You
14 know, we don't want a jury which is already
15 predisposed to convict this man. That's all we
16 want, and any fair jury, any fair jury is going to
17 do all right. It's going to do-- and here is the
18 problem we have here, Judge, is that you have
19 statements which are in the paper which are
20 contradicted by the contemporary state of the
21 information which is available now to be put on the
22 stand at trial. Jurors are going to already come
23 through here with preconceived notions.

24 The preconceived notions, one of the most
25 devastating preconceived notions, here is a man who
26 has been convicted and sentenced to death by
27 members of our own community. Our brothers and
28 sisters who live in this community selected from a
29 cross section of the community like us, they are

1 going to come in here and take the view that they--
2 there is no way in the world you can expect a
3 person, a good person or any kind of person in that
4 kind of a situation to come in here without some
5 kind of taint on their mind about the state of the
6 evidence.

7 Now everybody that hears me talking knows this
8 is true. I mean, you know, of course, we don't
9 always function with the truth or deal with the
10 truth. But that is true; regardless of what
11 anybody thinks about who did it and who didn't do
12 it, everybody knows it is going to be impossible to
13 pull a juror out of this community or a jury out of
14 this community -- I'm not saying that there is no
15 individual in the whole county who hasn't heard
16 about it, nor am I saying that there is no
17 individual in the whole county who can struggle,
18 who can struggle to be fair. But see, you are not
19 required under this Constitution and under this law
20 of this state as well as this country to struggle
21 to be fair. Anybody that has to struggle to be
22 fair shouldn't be on the jury. We want people to
23 come in here who don't have the burden of having
24 been in a county where this case has been tried,
25 where the publicity has been projected on the
26 Defendant showing that, in fact, that he has been
27 convicted and sentenced to death in their own
28 community.

29 And so the situation that I am, that I am

1 saying to the Court is that the evidence adequately
2 personifies that or portrays that or illustrates
3 that. We have a situation here where the survey is
4 taken demonstrating-- the survey that has been
5 taken demonstrates -- of course, the Court didn't
6 give us any money for any survey. We don't have
7 money for surveys, so we do the best we can. The
8 Court didn't even want to give us money for half
9 the other things we needed. And from what I
10 understand, we asked for one kind of an expert in
11 one situation, and we got somebody else under
12 another kind of situation.

13 So regardless of whether that is right or
14 wrong, you know, it's an indigent defendant. In
15 fact, this Court has ruled that this man is
16 indigent. So what we are saying is that under
17 these circumstances we did the best we could. We
18 sent some people out. They came back, and they
19 said over 75 percent of the people they talked to
20 knew about the case. Well, more than that knew
21 about the case, but 75 percent of the people
22 expressed an opinion which was, in fact, that Mr.
23 Flowers is guilty. Many people, many, many, many
24 knew that he had already been found guilty.

25 So, you know, so you know, what are we doing
26 here? You know, at this point the Court has denied
27 motions to not try this case over again. But if
28 the Court insists upon trying it again, all we say
29 is just give us a fair deal. Give us a good deck.

1 You know, that's all we want. Give us good yard
2 stick, and believe me, we feel confident that with
3 a good yard stick, a fair deck we will do all
4 right.

5 And so that's all we are looking for, and so
6 this is not only a plea based upon the
7 Constitution, based upon both Constitutions, but a
8 plea based upon the decency of people or on the
9 international law, upon human rights and the
10 understanding that we are all human beings and we
11 should all treat each other like human beings,
12 however much we might hate each other or dislike
13 each other at a given moment. And so that's all we
14 are asking for.

15 And half the people sitting in here right now,
16 regardless of what the ruling of this Court is, are
17 going to walk outside and admit to each other that
18 we are absolutely right, and that's why some people
19 want the case here because they know we are right.
20 They know there is no way you are going to get a
21 fair jury in this kind of circumstance.

22 So that is why we brought this motion. That
23 is why we will continue to give submissions to this
24 Court, and that's why we are asking that this venue
25 be changed from this county. And I would just in
26 my closing, and I am no prophet, but I certainly
27 have been right before on these kind of issues.
28 This case will be around here for another 20 years
29 back and forth, back and forth if you send a case

1 to the Supreme Court where you try a man again in
2 the very county where he has been sentenced to
3 death, in the county which we can see from the
4 publicity where the publicity is very little
5 different from the county where you removed him
6 from in the first place for the trial. So if you
7 saw fit to change the venue here, there is no
8 reason why we shouldn't change the venue again. So
9 that is our presentation.

10 BY MR. EVANS: Your Honor, basically, they
11 have put on no proof that there is any need for a
12 change of venue. The reasons for change of venue
13 are clear: If a community has such a preconceived
14 notion that they cannot be fair and impartial, the
15 case should not be tried there. There is no
16 indication that that has happened. As a matter of
17 fact, most of the newspaper articles that they have
18 introduced have been statewide newspapers. They
19 have not been local newspapers. This is not
20 something that is centralized in Tupelo. This is
21 something that made the news all over the state,
22 and the law is clear on that, that just because
23 there are newspaper articles out that tell a
24 version of a story, that does not mean that people
25 have made up their minds about the story. Many
26 people don't read the newspapers. Many people
27 don't believe what they see in the newspapers.

28 The whole thing about a change of venue rests
29 on one important factor. This Court has got to

1 make that decision. This Court can only fairly
2 make that decision if there is proof before it. At
3 this point the Defense has put on no proof that
4 this would not be a proper county for this case to
5 be heard in. The Defense has put on no proof that
6 the people in this community have prejudged this
7 case.

8 The only way that that can be done, this Court
9 has already drawn a venire. This case is set for
10 trial. When that jury comes in, they will be voir
11 dired by the Court. They will be voir dired by the
12 attorneys on both sides, and the people at that
13 point under oath will have the ability to make
14 their comments about whether anything that they may
15 or may not have heard has made up their mind about
16 this case. If it has, as the Court well knows,
17 they could not sit as jurors on this case. And we
18 will only know after voir dire whether or not the
19 jury panel in this case can or cannot hear this
20 case. If the jury in this case, if the majority of
21 them are willing to try this case, has not heard
22 anything about the case or does not have
23 preconceived notions about the case and states that
24 they can be fair and impartial, then this case can
25 clearly be tried in this county. There have been
26 many cases where there has been a change of venue.
27 The Courts have upheld retrying the case or trying
28 the second case in the same county. That is no
29 problem.

1 It all rests on one important factor: Can the
2 twelve jurors that sit and try this case be fair
3 and impartial jurors. And that can only be
4 determined at this point when that jury is
5 impaneled because there has been no proof put on in
6 this hearing that a jury could not be impaneled in
7 this county that could be fair and impartial.

8 One moment.

9 (Pause while Mr. Evans confers with Mr.
10 Horan.)

11 BY MR. EVANS: Your Honor, also as the Code
12 Section, Section 99-15-43 states on change of
13 venue, it says, "In capital cases the application
14 for the change of venue must be made before the
15 drawing of any special venire...." In this case
16 there was no attempt to put on any witnesses or any
17 proof before the special venire was drawn in this
18 case. "Which is summoned to appear on the day the
19 case is set for trial, or it will be too late,
20 except where the ground on which such application
21 is based occurred after the drawing of such
22 venire." And there clearly has been no attempt by
23 the Defense to put on anything that has occurred
24 after the drawing of the special venire that would
25 taint this panel.

26 That's all we have, Your Honor.

27 BY MR. LUMUMBA: Judge, first of all, this
28 Motion was brought to the attention of this Court
29 long ago. This is actually a reassertion of the

1 Motion. And at the time that we brought the
2 Motion was before the venire was picked. And
3 secondly, the Court said that we could reraise the
4 Motion at any time is what it said. So we did
5 exactly what the Court has said, and we did it the
6 best we could with the resources that we have
7 available.

8 Let me also say this, is that we have cited,
9 you know, lots of case law and the Court has our
10 motion, you know, for the change of venue which
11 cites the case law. And we would ask the Court to
12 look closely at that law because I think that law
13 will speak significantly to issues at hand.

14 (Defense Counsel confer briefly.)

15 BY MR. LUMUMBA: I would also point out to
16 this Court while we are arguing the facts on this
17 issue that the Court has heard the witnesses who
18 have testified. The State, of course, doesn't want
19 to give too much credence to what the young man,
20 Ishmael Muhammad, had to say even though the State
21 brought people on the stand who had never asked
22 anybody what their opinion was. Ishmael Muhammad
23 had asked people what their opinion was, and he got
24 the answers which show that they were bias. The
25 State would prefer that you believe a person who
26 has never asked anybody, a person who is active in
27 the community and doesn't know half the other
28 active people or know what their opinions are, or a
29 Sheriff, a Sheriff who works, deals in the business

1 of trying to bring people to trial, get them
2 convicted and execute them. That's who you would
3 prefer to listen to.

4 So I would think the evidence does speak
5 eloquently to the fact that there is some bias.
6 Not only Muhammad's testimony, but Mr. Robert,
7 Robert Bland, I think is the witness that we
8 brought in who lived here right in the community
9 and testified, and he also mentioned some other
10 people, or he mentioned at least one other person
11 named Walter Stanphill. So there is evidence. In
12 fact, there is no evidence that the community is
13 not biased. The evidence is to the contrary. The
14 evidence is that you do have a biased community.

15 And I don't think the Supreme Court overlooks
16 logic and rational, a situation. We have got a man
17 convicted, sentenced to death here once already,
18 and on the heels of that we bring another trial.
19 So we would ask that the venue be changed based
20 upon the presentation that was made.

21 **BY THE COURT:** Okay, I need, I'm going to put
22 in the record a little chronological order as I
23 remember things as they have happened in this
24 case. As I recall, the original venire that was to
25 be drawn in this case was to be drawn, I believe,
26 December 3rd. It was the first week in December.
27 And that was the first appearance by Counsel for
28 the Defendants in this case. Mr. Freelon appeared
29 on that day. On that day there were discussions

1 about a lot of things. Mr. Freelon at that time
2 said that Counsel for the Defendant intended to
3 file a motion for change of venue. We had some
4 subsequent hearings in the case. That venire was
5 not used. That case was originally set for the
6 first of February, somewhere around the first of
7 February. On motion of the Defendant the case was
8 continued.

9 At the time it was continued I set up a
10 scheduling order that had a motion deadline in it.
11 I believe that was 60 days. I could be wrong, but
12 my order will reflect whatever it was. At that
13 time Counsel for the Defendant told me that they
14 intended to file a motion for change of venue.
15 Before that 60 days had elapsed, there was another
16 motion filed asking for me to extend the deadline
17 in order that they could file other motions
18 including one for change of venue. I sustained
19 that motion and gave them an additional 60 days in
20 order to file those motions.

21 I believe, and there again my order will have
22 to speak for itself, but I believe those deadlines
23 expired in May. I then issued an order directing
24 that the venire in this case be drawn, and that was
25 drawn, I believe July the 8th, but it was around
26 the first week of July. Mr. Freelon was present at
27 that time. No motion for change of venue had been
28 filed at that time. He reserved the right to
29 object to the venue after voir dire, and I granted

1 that. I did not grant him a right to file a motion
2 to change the venue any time he thought he ought
3 to, and I have never told Counsel for the Defendant
4 that. I have consistently told them that they had
5 a right to renew that motion after voir dire.

6 So this motion is first, was filed about, this
7 Motion was filed about a week ago. So it has been
8 filed after the venire was pulled, so it's in
9 violation of 99-15-43. In addition, I have looked,
10 I received a copy from Counsel for the Defendant of
11 this Motion within the last week. I cannot
12 remember whether it was faxed to me or mailed to
13 me, but it was a copy. That copy contained no
14 affidavits in support of the Motion. I have looked
15 in this file in this case, and I find no affidavits
16 in support of the Motion. Therefore, this Motion
17 does not comply with the statute in that regard, so
18 it's not properly before the Court.

19 Having heard all the evidence so far today
20 though, the Court is willing to consider what has
21 been presented to it. The first publicity came
22 about in this case when this matter occurred in
23 1996. There was some extensive publicity, both
24 from the television media and the newspapers at
25 that time. As a result of that, the counsel-- then
26 Counsel for the Defendant moved that there be a
27 change of venue. There was no objection by the
28 State. Therefore, the case was moved to Tupelo.

29 The next publicity that I know of and

1 certainly, the only that has been in evidence in
2 this case was-- I mean that is now in evidence in
3 this case is when Mr. Flowers was arrested. I
4 think that consisted of something, some publicity
5 that lasted no longer than a week, and I believe
6 that was in January of '97, or around there,
7 somewhere around that time. Anyhow, it was first
8 of January before the April 1997 term of court in
9 Montgomery County. That publicity was several
10 days.

11 The next thing that has been presented to me
12 was no further publicity until such time as the
13 trial occurred in Lee County in October of 1997.
14 That publicity consisted of coverage of the trial
15 by The Clarion Ledger and Daily Journal and Channel
16 9 in Tupelo. The coverage consisted of stories
17 about that trial that week only and not after it.
18 So there is no, there has been no publicity, or at
19 least there is no publicity in evidence and nothing
20 has been argued to me that there has been any
21 publicity about this trial for almost a year now.

22 The Defendant has come here today asking for a
23 change of venue with no evidence. It has placed,
24 he has placed one resident of Lee County on the
25 stand to say that he could not get a fair trial.
26 The only other evidence that is offered at all is
27 the, is the testimony of Mr. Muhammad, who said he
28 interviewed fifteen folks, ten of who said that
29 they couldn't give him a fair trial. Mr. Muhammad

1 is not a resident of Lee County. I don't even
2 recall whether he gave an opinion of whether he
3 could get a fair trial. He just reported what he
4 had found. That evidence is not sufficient to
5 change the venue in this case.

6 The Motion for Change of Venue is overruled.
7 I do once again state to Counsel for the Defendant
8 that after voir dire, if it appears after voir dire
9 that we cannot get a fair and impartial jury, then
10 if you renew that Motion, I will sustain it.

11 BY MR. LUMUMBA: Just a moment, Judge. Let me
12 just highlight this in our record here. It is no
13 question that the Court stated because this is how
14 the colloquy occurred. I asked the Court for a
15 Motion to Extend the Time for Filing Motions. The
16 Court said, What kind of motions do you want to
17 file? I said, I don't know yet because we are
18 still reviewing evidence and we don't know what
19 they all are, but one of them is Motion for Change
20 of Venue. The Court said, Well, what else do you
21 need to file because you can file a motion for
22 change of venue at any time.

23 Now that is in the transcript. I, in fact,
24 read it the other day. I don't have the transcript
25 with me. I am pretty sure it's the transcript of
26 the March 3rd hearing when Mr. Veal testified, but
27 it is clearly in one of these pretrial
28 transcripts. So that part of this Court's decision
29 factual resume' is absolutely inaccurate.

1 **BY THE COURT:** Well, it is in the record. The
2 record will speak for itself.

3 BY MR. LUMUMBA: Okay, and as we said, we will
4 appropriately supplement the record on this issue,
5 and we think that the change of venue is always a
6 motion which can be heard any time that this Court
7 decides or discovers or should discover based on
8 the evidence, irrespective of what his personal
9 feelings might be, that change of venue should be
10 granted. So that's our position on this case.

11 **BY THE COURT:** Okay. Let's take about 10
12 minutes, gentlemen, and see where we are.

13 (FOLLOWING A RECESS, THE MOTION HEARING OF
14 SEPTEMBER 2, 1998, CONTINUED IN OPEN COURT WITH ALL
15 PARTIES AND THE DEFENDANT PRESENT AS FOLLOWS:)

16 BY MR. LUMUMBA: For the record, December 3rd
17 of 1997, Motion for Change of Venue is in the
18 file. So Motion for Change of Venue - let me give
19 this back to the Court - it's in this file here.
20 And we will also submit something of notice for the
21 record. Take a copy of the transcript where the
22 Court told us we could file a motion for change of
23 venue at any time.

24 Moving on, and so this motion, by the way, we
25 styled the Second Motion for Change of Venue, and
26 that is also a matter of record in the file.

27 The-- I just wanted to just cross a few
28 discovery items. We have given the State a number
29 of items in discovery. We will be submitting

1 others to them right away. We are giving them what
2 they gave us, copies of transcripts. We have never
3 received tapes, live tapes from the State. We have
4 been told that they would make them available for
5 us. It is somewhat difficult to copy their tapes
6 although we are going to endeavor to set up another
7 date and to do it. The problem is we came up here
8 to copy the tapes at one point, and we found out
9 the tapes were small tapes. What we have is-- we
10 would have a better ability if we could rent a
11 machine which would copy large tapes. We will have
12 to do it the slow way with the small tapes because
13 they do have a little - what you have, what do you
14 call those things? - cables which will allow us to
15 copy, but it's a much slower process. We will do
16 it.

17 So we have given them the same opportunity,
18 and I would ask that they be ordered to give us an
19 actual copy of the tape. Of course, I understand
20 that the Court has previously indicated that they
21 don't have to do that. They can just make them
22 available to us, but I am sure the Court is willing
23 to make whatever, give us whatever rights they are
24 willing to give them. So I am letting it known we
25 have given them notice that we have several tapes,
26 and if they want to come copy them, they can come
27 copy them. If they don't want to come copy them,
28 that is fine. They can come to Jackson and copy
29 them just like we can come to Winona and copy

1 theirs.

2 So that is the status of things, and we will
3 attempt to make sure that we provide a notice of
4 discovery with items which we present to them or
5 either present them under a letter which will allow
6 us to document what we are presented. I actually
7 have a few other transcriptions here which will be
8 mailed, which is probably in the mail today coming
9 to them, but I don't want to give up anything
10 without a letter which documents what it is being
11 given with.

12 So that is a discovery item. We would, our
13 request would be, is that the Court order them, and
14 we would reciprocate, to actually give us copies of
15 the tape. We have reason to believe that some of
16 the transcripts are not accurate reflections of
17 what would have been on the tape based on witnesses
18 we have talked to who said they didn't say certain
19 things. Whether they are telling the truth or not,
20 we don't know. But we certainly think we need to
21 have a copy of the tape. So we will reciprocate -
22 I think that is the word - if we can get copies of
23 the tape from them. If they can't give us copies
24 of the tape, fine, even steven. They can come to
25 Jackson and get copies of ours.

26 BY MR. EVANS: Your Honor, in response as this
27 Court knows and this Court has already heard, we
28 have already furnished discovery in this case. I
29 don't know--

1 **BY THE COURT:** --I know. When I looked at
2 you, the only question I need for you to answer for
3 me is whether you are willing to copy your tapes.

4 BY MR. EVANS: Your Honor--

5 **BY THE COURT:** --in return--

6 BY MR. EVANS: --I want to explain to the
7 Court what has gone on up to this point. This
8 Court ordered us to make these tapes available
9 which we said we had no problem with. I had these
10 tapes available in Grenada at my office on the date
11 that Harvey Freelon said he would come up there. I
12 made a special point of calling one of my
13 investigators, John Johnson, off of an
14 investigation he was working to be in Grenada with
15 those tapes so that they could copy them. He came
16 in there; he didn't want to copy them. He didn't
17 want to copy them tape to tape. He wanted to go
18 back and get some more equipment to copy them with,
19 so we set up another date. I had the tapes there.
20 I had my investigator there. I called him off of
21 what he was doing to make the tapes, and they just
22 didn't see fit to show up. So I am tired of
23 playing games with them.

24 **BY THE COURT:** Well, what I am asking you is
25 if you are going to get tapes, they are going to
26 copy theirs and give them to you. Are you willing
27 to copy yours and give them to them so that y'all--

28 BY MR. EVANS: --We have done it once.

29 **BY THE COURT:** You have copied them?

1 BY MR. EVANS: Yes, sir. We have copied
2 them. We furnished them in discovery to start with
3 in this case.

4 BY THE COURT: Okay. Well, what are you
5 arguing about if y'all have got the copies?

6 BY MR. HORAN: He is talking about Mr.
7 Gilmore.

8 BY MR. LUMUMBA: We have never received copies
9 of any tapes period.

10 BY MR. EVANS: The Gilmores were furnished all
11 of this information. They gave their discovery to
12 them. We told them that if they wanted another
13 copy of it, we would be glad for them to come copy
14 it.

15 BY MR. LUMUMBA: The Gilmores have represented
16 to us that they don't have copies of them.

17 BY MR. EVANS: I think the rules are very
18 clear that we make that available to them. They
19 can come copy them.

20 BY MR. LUMUMBA: Judge--

21 BY MR. EVANS: --We offered to copy them the
22 day that he was there tape to tape. That's all we
23 can copy them on.

24 BY THE COURT: All I want to know is I am just
25 talking about, you know, like in the old war movies
26 when they exchange spies at the middle of the
27 bridge, where everybody meets up there and they
28 swap. That's all I want to know, if y'all are
29 willing to do that.

1 BY MR. EVANS: Well, apparently opposing
2 Counsel doesn't think there is any swap supposed to
3 happen.

4 BY THE COURT: I understand that--

5 BY MR. EVANS: --That's one of the other things
6 I wanted to bring--

7 BY THE COURT: --I understand that, but I'm
8 trying to get a commitment from you whether your,
9 whether half the equation is there.

10 BY MR. EVANS: Your Honor, we have made
11 ourselves available twice. They don't want to do
12 it.

13 BY THE COURT: That is not answering my
14 question.

15 BY MR. EVANS: We will make ourself available
16 again, anytime the Court tells us to.

17 BY THE COURT: No, will you make them copies?

18 BY MR. EVANS: If they want to send me a
19 tape. I'm not going to pay for it. If they want
20 to send me a tape, I will make them a copy.

21 BY MR. LUMUMBA: What is good for the goose is
22 good for the gander.

23 BY THE COURT: Okay, you are going to have to
24 send him one back.

25 BY MR. EVANS: Well, considering he is not
26 going to send me anything anyway--

27 BY THE COURT: --You know, we have got a lot
28 of important things in this case to fight about.
29 Why are we fighting about this?

1 BY MR. EVANS: Because of this right here.
2 This Court has ordered at least four times for them
3 to give--

4 BY THE COURT: --I understand all that--

5 BY MR. EVANS: --Your Honor, may I put this in
6 the record?

7 BY THE COURT: Yeah.

8 BY MR. EVANS: The first time we have ever
9 been furnished any reciprocal discovery was today
10 when I was hand-delivered this discovery which I
11 want in the record is supposedly a transcript of an
12 audiotape from Frederick Veal that was taken many
13 months ago, newspaper articles, and a letter from
14 Odell Hollman. And that is still the only
15 discovery we have gotten, and this is, I don't even
16 know how many months late.

17 BY THE COURT: I understand all that. Here is
18 what I'm going to order. I want to move on with
19 this. I'm going to order each of you to copy the
20 tapes, and then you are to meet; somebody from your
21 office has got to meet in person and swap those
22 tapes personally so I don't get into this question
23 of who sent what. I wanted them swapped.

24 BY MR. HORAN: When, Your Honor?

25 BY THE COURT: Well, when can you do it?

26 BY MR. HORAN: I mean we are going to have to
27 have a date. We haven't been able to agree on
28 anything else.

29 BY THE COURT: Okay.

1 BY MR. HORAN: Next Tuesday. We will be in
2 Kosciusko; that is about halfway.

3 BY MR. LUMUMBA: Mr. Freelon is the one that
4 is going to do it.

5 BY THE COURT: Okay, y'all swap them at 1
6 o'clock at the Attala County Courthouse in
7 Kosciusko, Mississippi, on September the 8th.

8 BY MR. EVANS: We are talking about Frederick
9 Veal and Maurice Hawkins' tape; is that right? Is
10 that what you say you are going to have?

11 BY MR. LUMUMBA: Hold it. (To Mr. Freelon) Is
12 that okay?
13 Now we don't have any tapes. We want every tape of
14 every witness.

15 BY THE COURT: You don't have any tapes?

16 BY MR. LUMUMBA: We don't have-- no, no. We
17 have tapes that we can give to them now, but I am
18 saying we don't have any of their tapes.

19 BY THE COURT: That's what I'm trying to get
20 you.

21 BY MR. LUMUMBA: Okay, because we don't have
22 any of those. Not one. But, yeah, we would-- but
23 you are asking, but I didn't understand when he
24 said Frederick Veal and Maurice Hawkins. If he is
25 asking us if that is the only tapes we want, we
26 want tapes of everything.

27 BY THE COURT: No, no. He is asking, he wants
28 the tapes you have of Frederick Veal.

29 BY MR. EVANS: No, what I'm asking is what

1 they are claiming they don't have. We are talking
2 about probably thirty something tapes that have
3 already been furnished once, and it gets old having
4 to keep--

5 **BY THE COURT:** --Who has got those tapes?

6 BY MR. FREELON: Your Honor, first of all,
7 those tapes have never been furnished. We have
8 talked to--

9 **BY THE COURT:** --Who has got them? If they
10 have furnished them to somebody, who has got them?

11 BY MR. FREELON: The District Attorney's
12 Office.

13 BY MR. EVANS: The originals are in our
14 custody. The copy was furnished to the Gilmores.

15 BY MR. LUMUMBA: The Gilmores--

16 BY MR. FREELON: --The Gilmores have stated
17 clearly that they have never received copies of
18 those tapes. Now I went down to Grenada and they
19 made two tapes available. That's the reason. I
20 went to copy all the tapes. I was prepared to copy
21 all the tapes, and only two tapes was made
22 available at that time.

23 BY MR. HORAN: At that time; you may be right
24 about that.

25 BY MR. FREELON: At that time. Well, at that
26 time; I don't know about any other time because I
27 didn't go at any other time, but at that time I
28 think John Johnson was on his way from Winona with
29 two tapes at that time. But we have never received

1 copies of any of the other tapes from the
2 Gilmores. And the Gilmores, when we specifically
3 asked them did they have any tapes, they don't have
4 any tapes. They never had any tapes. What they
5 had is actually transcripts.

6 BY MR. HORAN: Your Honor, let me respond. I
7 wrote Mr. Freelon. I made myself available. I
8 changed the court dates so I would be there, Mr.
9 Johnson be there on the second date. Mr. Freelon
10 didn't even pay me the courtesy of a phone call to
11 tell me he wasn't coming. I wrote him a letter and
12 told him I wanted 24 hours notice prior to him
13 coming to copy the tapes and then another one hour
14 notice prior to him arriving at my office so I
15 would know he would be there. And that's why he
16 didn't get the tapes copied because he never called
17 me back to say he was coming to copy the tapes.

18 BY THE COURT: Both sides have thoroughly
19 established that y'all are not cooperating with
20 each other. I understand that. Now what I'm
21 trying to do is move past that point.

22 BY MR. EVANS: Your Honor, I think it's clear
23 that we have attempted to cooperate--

24 BY THE COURT: --I understand, Mr. Evans. You
25 don't have to-- I perfectly understand what is
26 going on.

27 BY MR. LUMUMBA: I am with you on this one,
28 Judge. I am ready to move beyond here too. We
29 have both made our record, but if Tuesday is okay

1 with Mr. Freelon? We will copy the tapes that we
2 have that are discoverable and bring them to them--

3 BY MR. EVANS: Here we go again.

4 BY THE COURT: No, we are not.

5 BY MR. LUMUMBA: No, no, Judge. You sent me
6 an order; is that correct? You sent me an order
7 stating what was discoverable. I am going to
8 follow your order, and everything under that order
9 that is discoverable they will get.

10 BY THE COURT: All right, well, I want you to
11 tell them right now what you are going to give
12 them.

13 BY MR. LUMUMBA: I am going to give them a
14 tape of Frederick Veal. I'm going to give them a
15 tape of Maurice.

16 BY THE COURT: Hawkins.

17 BY MR. LUMUMBA: Hawkins maybe.

18 BY THE COURT: No, no, ain't no maybes.

19 BY MR. LUMUMBA: No, no--

20 BY MR. EVANS: --Your Honor, this is the same
21 mess that we have been putting up with the whole
22 time--

23 BY MR. LUMUMBA: --Now hold it. Hold it. Let
24 me, let's get beyond that. Let's get beyond that
25 and--

26 BY MR. EVANS: --No, let's follow the rules.

27 BY MR. LUMUMBA: Excuse me. Can I talk?

28 BY THE COURT: Yes, sir. Go ahead. I want
29 you to go ahead and tell me what you are going to

1 give them.

2 BY MR. LUMUMBA: Okay, Judge, let me tell you.
3 I'm going to give them a tape of Frederick Veal.
4 I'm going to give them a tape of Roy Harris, who we
5 may call as a witness. I'm going to give them a
6 tape of Jerry Gholston, who we may call as a
7 witness. I am going to give them a tape of, I
8 think we have another tape which involves Frederick
9 Veal, who we may call as a witness at this time.
10 There may be a few other witnesses that we may
11 call. Anybody else that I have a tape of that we
12 may call as a witness, I'm going to give them a
13 tape of. There is people who we-- let me say this,
14 Judge. Let me say this. We are not required under
15 the law that you sent us to give them a tape of
16 people who we will not call as witnesses. They are
17 not required to have that. So we, but we-- but now
18 let me tell you why I hesitate on Maurice Hawkins
19 is because we have not decided that we may call
20 Maurice Hawkins as a witness.

21 BY THE COURT: Well, let me ask you this.
22 Isn't there a transcript of what he said on that
23 tape in this file now?

24 BY MR. LUMUMBA: They already have that. They
25 have--

26 BY THE COURT: --Is that all of what he said
27 on that tape?

28 BY MR. LUMUMBA: Yeah.

29 BY THE COURT: Give them the tape.

1 BY MR. LUMUMBA: Okay, because they already
2 have the transcript.

3 BY THE COURT: Right.

4 BY MR. LUMUMBA: Okay, I will go with that,
5 Judge. I agree with you on that. Okay. I don't
6 necessarily agree with you, but I will give them
7 the tape.

8 BY THE COURT: Well, I know you can't agree
9 with me much.

10 BY MR. LUMUMBA: Okay. Yeah, I will give them
11 the tape. So those are the ones that I know about
12 right now. I have to review my records to see if
13 there is anything else. But I know that those are
14 things that I will give them, the people I just
15 named, okay.

16 BY THE COURT: Okay.

17 BY MR. LUMUMBA: And I will give them those
18 tapes, and we need, we need the videos that they
19 have too. They have the video of the scene. Okay,
20 they want--

21 BY MR. EVANS: --We are going to follow the
22 rules.

23 BY MR. LUMUMBA: Well, you don't want to give
24 us a copy of the video? We can supply--

25 BY MR. HORAN: --Your Honor, we are two weeks
26 prior to trial. We are going to make them
27 available. If they want to come copy them, they
28 can.

29 BY MR. LUMUMBA: Okay, well, the same thing

1 for our videos. We have--

2 BY MR. HORAN: --I mean, Judge, we can make
3 copies of everything. This is two weeks prior to
4 trial--

5 BY MR. LUMUMBA: --Okay. I'm not going to
6 argue with them. We will give them the
7 audiotapes. We have videotapes which we intend to
8 perhaps use as exhibits--

9 BY THE COURT: --Wait, wait. Okay--

10 BY MR. EVANS: --If they do, they can't use
11 them now because they didn't furnish them in
12 discovery.

13 BY THE COURT: I understand. We will cross
14 that bridge when we get to it. I understand what
15 you are saying. Neither one of y'all are going to
16 agree on any of that. So I've got an order in the
17 file saying what you have got to produce, and
18 everybody is just going to have to live with their
19 own decision on that. Now let's move on to
20 something else.

21 BY MR. LUMUMBA: Okay, now--

22 BY THE COURT: --We are wasting a lot of time
23 on this.

24 BY MR. LUMUMBA: Okay, well, can I get an
25 interpretation of the Judge's order so we won't
26 waste any time? Does your order the way you
27 interpret it say that if we have a tape that we
28 intend to use - and I'm talking about an audio-- a
29 videotape at this time, that we have to just notify

1 them and make them available to them like they want
2 to do with us, or does it say that we actually have
3 to copy them and give it to them?

4 **BY THE COURT:** I think you have to make them
5 available to them.

6 BY MR. LUMUMBA: Okay, we are making them
7 available to them.

8 **BY THE COURT:** Okay. When?

9 BY MR. LUMUMBA: I have given them notice
10 where they are at--

11 **BY THE COURT:** --When?

12 BY MR. LUMUMBA: Anytime you want to come to
13 Jackson.

14 **BY THE COURT:** When do you want them?

15 BY MR. HORAN: We will get up with them, Your
16 Honor. I don't necessarily know when--

17 **BY THE COURT:** --Okay, well, get up with them.
18 It may or may not work out, so that's--

19 BY MR. LUMUMBA: As long as he lets me know in
20 advance, they will be there.

21 BY MR. EVANS: But Your Honor, is this saying
22 that they do not have to follow the rules of
23 discovery?

24 **BY THE COURT:** No, sir. No, sir. Everybody
25 that violates the rules of discovery puts
26 themselves in the position of having witnesses that
27 can't testify. That is just what the rules are and
28 what the sanctions are. So there are a lot of
29 different avenues to travel when that time comes,

1 but I have done all I can do, folks. I have given
2 y'all an order and directed you to the rules.

3 BY MR. LUMUMBA: Okay, Judge--

4 BY THE COURT: --Let's go on to some other
5 motions. I assume we have got some more.

6 BY MR. LUMUMBA: Yes, sir. We certainly do.
7 We have a Motion to Quash Traverse Jury Pool and to
8 challenge the composition of the traverse jury
9 pool. This Motion is based in large part on the
10 questionnaires that we have received back. We do
11 not have a complete set of questionnaires back
12 yet. So we would think that this Motion should be
13 continued to a point in time when we do have a
14 complete set. However, in interest of the Court's
15 time, we don't mind presenting what we have at this
16 time. And in the Motion it does present what we
17 have.

18 One of the things that it points out that, of
19 course, Mr. Flowers has a constitutional right to a
20 fairly selected selection of jurors from the jury
21 pool. It also points out; it has an affidavit
22 attached to it from Mr. Brian Neely, who has
23 indicated that he would be available to testify on
24 a date next week. He is not available this week
25 because he is in a trial. He is an attorney here
26 in this jurisdiction. He points out that the
27 percentage of blacks in this community are over 21
28 percent. You can see that for yourself with the
29 information that we have gained, say from the

1 census information. And also, he also points out
2 that almost always there are less than two, two or
3 less blacks on the jury, and many times in Lee
4 County, as in this past case, the jurors are all
5 white. Systematic exclusion of black people from
6 the jury is at the center of this Motion.

7 Now in the jury surveys that we did, there are
8 only 12 blacks out of 112-- not surveys, jury
9 questionnaires that we have received back from the
10 Clerk. Now the Clerk just gave us some other
11 questionnaires. I haven't had a chance to look at
12 those. I don't know what they say, but I notice
13 that as my counsel was reading them, he was shaking
14 his head which probably suggests they were pretty
15 much like the other ones. But we will, you know,
16 reserve time to make an additional presentation on
17 that.

18 But the ones that have to this point, there is
19 only, and I guess as a matter of record, official
20 record of the court, there is 112 that we received
21 prior to today. Out of those 112, only 12 of them
22 are black. That is far below the 21 percent ratio.
23 The black ratio is something like 9 percent. That
24 is only 9 percent of the persons of the jury. Mr.
25 Neely tells us that historically, the number of
26 blacks have been far less on the jury pools here
27 than their stated percentages by the census data.

28 We also have a problem with the infection of
29 the jury with an improper questionnaire and a

1 questionnaire which does not comport with the
2 Court-ordered questionnaire. The Court, in
3 response to a motion that we made to add about ten
4 different questions to the questionnaire that the
5 prosecution had proposed, and that questionnaire in
6 response to that-- and we submitted that
7 questionnaire, by the way, in a thing called
8 Supplement to Motion to Quash Traverse Jury Pool.
9 Our questionnaire had eight or ten, I think, other
10 questions that we were asking that be asked in
11 order to balance the questionnaire out. The Court
12 accepted one of those, and one of those questions,
13 although you may have asked for it to be
14 reframed, - I don't remember - was a question that
15 indulged into the racial attitudes of potential
16 jurors, critical in this case where one black is
17 accused of killing three whites and another black.
18 It's still a critical issue.

19 The situation arose where the-- number 38, the
20 prosecution reframed this questionnaire, and we
21 have attached that reframed questionnaire also to
22 the-- and the Court ruled. The Court ruled and
23 instructed the prosecution to, in fact, because I
24 read the transcript the other day, instructed the
25 prosecution to put a question in there on race.
26 The question on race was put in.

27 However, the questionnaire which went to the
28 jurors did not have that extremely important
29 question. In addition to that, the questionnaire

1 is inappropriate because the questionnaire asks the
2 Witherspoon question. In other words, do you have
3 reservations and beliefs and otherwise about the--
4 and inappropriately or inaccurately asked the
5 question, but it does ask it. It says do you have
6 beliefs or religious beliefs or other kind of
7 beliefs that would cause you problems - I'm not,
8 I'm trying to paraphrase it - of giving the death
9 penalty. The accurate way to ask it is, "Do you
10 have beliefs or problems that would prevent you or
11 cause you problems with considering the death
12 penalty?" No court can ever require anybody to
13 give the death penalty. It's just a question of
14 whether they can consider it.

15 So that is one of the problems with the
16 question, but the second problem with the question
17 is it's not balanced out. We tried to save the
18 questionnaire by making our suggestions to the
19 Court as to what other questions should be included
20 in it. Amongst the questions that we asked and
21 asked to be asked to the jurors was a question of
22 whether they would automatically give the death
23 penalty to a person convicted of capital murder.
24 That is also attached to your supplemental motion,
25 our motion, I mean our proposed questionnaire that
26 we submitted to the Court along with our motion.

27 The Court, for whatever reason, didn't see fit
28 to put that in the questionnaire leaving the
29 questionnaire constitutionally infirm. The jurors

1 now have been asked to concentrate on the issue of
2 whether they can give the death penalty without
3 being asked to concentrate on the issue of whether
4 they would have some automatic notion that they
5 would have to give or should give the death penalty
6 or would have to give the death penalty at least in
7 their own conscience if a person was convicted of
8 murder or capital murder. That being the case, you
9 have a jury of people coming in here who are not,
10 you know, who have not been asked balanced
11 questions, and that is of injury to the defense.
12 We don't know who those people are, and it
13 certainly will be more difficult in the environment
14 of being in a populated courtroom to find those
15 information out than it will in the quiet of
16 somebody's home where they were filling out these
17 questionnaires. It is prejudicial and also, we are
18 denied the race question which this Court approved
19 which, in fact, the questionnaire itself turns out
20 to be a violation of the Court's order.

21 So two major questions arise here, and there
22 is other questions too, that the jury pool I looked
23 at is under-represented as far as women are
24 concerned. Young people seem to be in a
25 significant minority and disproportionate to their
26 population as represented by the census track data
27 as well as women. So what, but the glaring problem
28 here is the issue as it relates to the black
29 community. I would say for that reason this jury

1 pool must be quashed.

2 And as I indicated to this Court, we have
3 submitted an affidavit which would attest to the
4 fact that these pools are always under-represented
5 which would suggest that there is some systematic
6 exclusion, and at the very least given that, the
7 prosecutor has the burden to go forward and to
8 suggest through evidence, hard evidence that this
9 jury pool which was never, never has an equal
10 number of black people on it as in the population,
11 is not a situation in which whites-- that works out
12 to a systematic exclusion.

13 I am told, I am familiar and I am sure the
14 Court is too of Swain v. Alabama. I am sure also I
15 cited it in my motion. And the progeny of cases
16 which come from the Scottsborough case and some
17 other cases, Mississippi cases too, where jurors
18 were being discriminated in the selection of the
19 jury. Swain v. Alabama is at 380 U.S. 202, a 1965
20 case. Duren v. Missouri is another case, but it is
21 all cited in my brief.

22 I am told that there is another case, and I
23 searched for it, but it has recently come out
24 which, in fact, states that as, by today's
25 standards any system, regardless of why it is in
26 place or how it's in place, if it does, if it works
27 over a period of years to systemically exclude
28 people of any given group, then that system is
29 infirm constitutionally and cannot be used. And I

1 think that actually is even stronger in Mississippi
2 than it is in some other states because the
3 Mississippi statute is quite specific about
4 exclusion of people for racial -- the Mississippi
5 Constitution, excluding people for race, on the
6 basis of race, sex, economic circumstance or other
7 things.

8 So we would move that the traverse jury be
9 quashed, and if the Court is not inclined to do
10 that at that time, our alternative relief would be
11 that we be allowed to present the witness when he
12 is available to testify, which he said he can
13 testify at a time during next week. I would point
14 out to this Court; I know the Court's schedule may
15 be burdened, but this is a man's life here. The
16 Supreme Court has seemed to take these cases
17 relatively serious, and so I don't think the time
18 should be a factor. If we have to do it next-- the
19 Court is certainly available on the 24th, not the
20 24th; I'm sorry, on the 14th, if we even have to do
21 it before we get into the jury selection on the
22 14th. That is one way to do it although we would
23 request an earlier date, and I am sure all involved
24 would like an earlier date.

25 BY MR. EVANS: Your Honor, I want to address a
26 few of the points that he raised, and then I would
27 have at least one witness I want to put on also.
28 But the law is clear in this state that, of how a
29 jury is to be drawn, and the case law is also clear

1 even up to the case of Beckwith v. State. That is
2 probably one of the latest Mississippi cases that
3 is on point on this. And in that particular case
4 it says that all that is necessary is that it be a
5 fair cross-section of the community drawn in a
6 proper manner. Everything from Beckwith on down
7 relies on the case of Lanier v. State, 533 So.2d
8 473.

9 And in Lanier it sets forth a three prong test
10 that must be made. The first prong is that the
11 group alleged to be excluded is a distinctive group
12 in the community. The second prong: That the
13 representation of this group in the venires from
14 which juries are selected is not fair and
15 reasonable and in relationship to the number of
16 persons in the community.

17 I will state to the Court that out of the 15
18 questionnaires that I was added to my list today,
19 that 5 of those have marked on the questionnaires
20 that they are black. One did not mark any race on
21 there, which is true of several of the
22 questionnaires that I have gotten. I would also
23 like to point out even though I don't think this is
24 an important or material issue, I would like to
25 point out at this very time there is a trial going
26 on across the hall where five of the twelve jurors
27 are black. So I don't think there can be any proof
28 that this is not a fair representation of the
29 community.

1 Before I go any-- well, I would like to go on
2 and state the third prong. The third prong is that
3 the under-representation is due to systematic
4 exclusion of a group in the jury selection process,
5 which clearly means that there has to be some
6 purposeful attempt to exclude a certain group from
7 the jury pool.

8 And at this point I would call the Circuit
9 Clerk, Ms. Joyce Loftin.

10 **JOYCE LOFTIN,**

11 a white female called to testify by the State on the
12 Defendant's Motion to Quash the Jury Pool, having first been
13 duly sworn by the Court, testified as follows, to-wit:

14 **BY THE COURT:** State your name for the record.

15 **BY THE WITNESS:** Joyce Loftin.

16 **BY MR. EVANS:** May I proceed, Your Honor?

17 **BY THE COURT:** Yes, sir.

18 **DIRECT EXAMINATION BY MR. EVANS:**

19 Q. Ms. Loftin, how are you employed?

20 A. Well, I am an elected official. I am the Circuit
21 Clerk here in Lee County.

22 Q. All right, and how long have you been Circuit
23 Clerk?

24 A. This is my first term to actually serve as the
25 Clerk. I have been deputy clerk and worked in the county for
26 the Board of Supervisors now for almost 18 years.

27 Q. All right, and as Circuit Clerk you are in charge
28 of the jury pool for this county; is that correct?

29 A. Yes, sir.

1 Q. Can you tell us how the juries are drawn for Lee
2 County?

3 A. Okay. First of all, we have a jury commission.
4 Our jury commission consists of three people who are
5 appointed to terms, four year terms. One is appointed by the
6 Board of Supervisors; one is appointed by our Chancellors,
7 and one is appointed by the Circuit Court Judges.

8 Q. All right.

9 A. So I work with them.

10 Q. And who is the president of that group?

11 A. Okay, a chairman probably is Mr. Norman Bowen.

12 Q. Okay, who is John Robertson?

13 A. John Robertson is the owner, I would probably,
14 owner/director of our Delta computer company who does our
15 computer consulting work for Lee County.

16 Q. And is that computer, is that the one that is used
17 for the juries?

18 A. Yes.

19 Q. Okay, go ahead and continue with how the juries are
20 drawn.

21 A. Okay, we do it pursuant to statute under the
22 Mississippi Code, Section 13-5-12. And it goes into the
23 explanation of how we draw a jury wheel, how we put the jury
24 wheel into a computer system, and how we come up with a
25 starting number and an increment number, and that is done by
26 our three juror commissioners.

27 Q. All right, and how do people's names get in that
28 computer?

29 A. Okay, we do a printout, an entire printout of our

1 entire voter roll for Lee County. That roll is given-- we do
2 them a printout. That roll is given to the Commission. Then
3 they meet and they determine or our, I guess our Senior
4 Circuit Judge determines approximately how many jurors we
5 will need for the year. Once they determine approximately
6 how many, the chairman of our Jury Commission gets a number
7 so that it will go through the entire roll, our entire rolls
8 so that "A's" through "W's" will be included in our wheel.
9 This year, I think we had 10,000. We put 10,477 jurors in
10 the wheel. We started, we chose every fourth number, and in
11 the statute it tells you the instruction on how they come
12 about with that number, and they actually drew a starting
13 number from a hat. And that starting number this year was
14 number one. So we started with voter number one, and we
15 selected every fourth voter.

16 Q. All right.

17 A. Until we got 10,477 voters. Once we did that, we
18 put that into the wheel, and each time we draw a jury, we go
19 into the computer. We bring up the jury wheel. We tell it
20 how many names we need, and it is selected at random.

21 Q. Okay, so--

22 A. --just at random, no alphabetical order.

23 Q. You don't go in and pick out certain ones that you
24 want on the jury?

25 A. No, sir.

26 Q. The wheel just, the computer automatically picks
27 them at random?

28 A. Yes, sir.

29 Q. Is there any attempt in any way that this is set up

1 to exclude anyone because of their age?

2 A. No, sir.

3 Q. Is there any attempt in the way this is set up to
4 exclude anyone because of their sex?

5 A. No, sir.

6 Q. Any attempt to exclude anyone because of their
7 religion?

8 A. No, sir.

9 Q. Any attempt to exclude anyone because of their
10 race?

11 A. We don't have the race. We don't even get the race
12 when they register to vote.

13 Q. I will hand you--

14 BY MR. EVANS: Well, first, may I have this
15 item marked for identification, Your Honor?

16 (AFFIDAVIT DATED APRIL 27, 1998, WAS MARKED AS
17 STATE'S EXHIBIT "A" FOR IDENTIFICATION TO THE
18 MOTION TO QUASH THE JURY POOL.)

19 (State's Exhibit "A" for identification was
20 shown to Mr. Freelon. Mr. Lumumba had stepped out
21 of the courtroom.)

22 BY MR. EVANS:

23 Q. Ms. Loftin, I will hand you Exhibit "A" for
24 identification and ask you if you can identify what that
25 exhibit is?

26 A. Yes. That is the affidavit where Mr. John
27 Robertson from Delta, I guess, made the affidavit or swore to
28 the fact that he did this pursuant to this Section, this Code
29 Section.

1 Q. And that's that he set up the computer system that
2 draws the juries pursuant to the Code Section that is allowed
3 in this state?

4 A. Correct.

5 BY MR. EVANS: Your Honor, I offer this
6 exhibit into evidence.

7 BY THE COURT: Any objection?

8 BY MR. FREELON: No objection.

9 BY THE COURT: Let it be marked.

10 (STATE'S EXHIBIT "A" TO THE MOTION TO QUASH
11 JURY POOL PREVIOUSLY MARKED FOR IDENTIFICATION WAS
12 NOW RECEIVED IN EVIDENCE.)

13 BY MR. EVANS:

14 Q. Ms. Loftin, if you know, can you tell us how many
15 qualified electors there are in Lee County?

16 A. I don't know exact number to date but
17 approximately, probably 45,000, maybe a few less or a few
18 more.

19 Q. All right, and is the system that is set up in Lee
20 County to draw jurors the system that is authorized by
21 statute in this state?

22 A. Yes, sir.

23 Q. And is there anything that has been done by you or
24 anyone else in this county to make that system, to alter it
25 in any way to exclude any type of people- ages, race,
26 religion or anything else?

27 A. No, sir, not to my knowledge.

28 BY MR. EVANS: Tender the witness, Your
29 Honor.

1 BY MR. FREELON: We have no questions.

2 BY THE COURT: No questions? All right, you
3 may have a seat back there.

4 BY THE COURT: Anything further, Mr. Evans?

5 BY MR. EVANS: No, sir.

6 (Mr. Lumumba enters the courtroom.)

7 BY MR. LUMUMBA: I have some questions for
8 her; I'm sorry.

9 BY THE COURT: Okay.

10 (Ms. Loftin resumes the witness stand.)

11 CROSS-EXAMINATION BY MR. LUMUMBA:

12 Q. Yes, ma'am. I'm sorry; I missed your name. Could
13 you give it again?

14 A. Joyce Loftin.

15 Q. And you would be the Clerk of the county; right?

16 A. That's correct.

17 Q. Of the Circuit really?

18 A. I am the Clerk for Circuit Court, and we have a
19 County Court here in this county, and I am also the Clerk for
20 the County Court.

21 Q. Okay, but in as far as this case is concerned, you
22 would be the Clerk for the Circuit Court; is that correct?

23 A. That's correct.

24 Q. Okay. Now you have told us some things about, you
25 know, I guess this pool you use the computer to draw the
26 names, do you?

27 A. Yes, sir.

28 Q. Okay.

29 A. You know, I just know that it's set by statute, and

1 we have a computer company, Delta, that does this for us.

2 Q. Okay, it would be safe to say, wouldn't it, that
3 the computer, of course, is-- only can draw from a selection
4 of what you put in it in the first place? Isn't that
5 correct? In other words, if a name has never been--

6 A. --We give the Jury Commission a complete list of
7 our voters, so it is drawn from the voter roll.

8 Q. Okay, so you give them a complete list; right?

9 A. Correct.

10 Q. And then the Commission decides what goes into the
11 computer; is that right? Or do they put the whole list in
12 there?

13 A. No. Only whatever the Senior Circuit Judge tells
14 us to draw.

15 Q. And, in fact, you have districts, voting districts;
16 is that correct, here in this county?

17 A. We have five beats, supervisors beats.

18 Q. Right, and it would be safe to say that there is
19 more blacks in some voting districts than other voting
20 districts; isn't that correct?

21 A. Yes, sir. We have a predominant black district,
22 District Four. We have a black supervisor.

23 Q. And then there are other districts which are
24 proportionately-- I mean like I know District Four has got
25 the most blacks in it; is that correct?

26 A. That's correct.

27 Q. And then there are other districts which has more--
28 what is the district that has the next most blacks in it?

29 A. I really don't know. I have no idea.

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 Q. Okay, all right. So if District Four is under-
2 represented, then in fact, the number of blacks in District
3 Four may be underrepresented; is that correct?

4 A. I didn't understand. You said District Four is
5 underrepresented?

6 Q. I say if it is; do you know whether it is or not?

7 A. (Brief pause).

8 Q. Yeah, you don't know--

9 A. --I know that it's a predominant black district.

10 Q. Yeah, but you don't know whether it's under-
11 represented or not, do you?

12 A. No, sir.

13 Q. Yeah, you don't really know that, okay. But if it
14 is, then in fact, that would be a district which has most of
15 your black people in it; isn't that correct?

16 A. Well, in that district that would be more blacks,
17 in that district.

18 Q. Well, let me ask you this here. The gentleman just
19 mentioned something about the case across the hall. Are you
20 familiar with that case over there?

21 A. Yes, sir.

22 Q. And it has got, he said it had five blacks on the
23 jury; is that right?

24 A. I'm not real sure. I know it has some. I have
25 seen them going up and down the hall, but countwise I don't
26 know.

27 Q. That is a white defendant, is it?

28 A. Sir?

29 Q. White defendant?

1 A. Yes, sir.

2 Q. And accused of killing a white person; is that
3 right?

4 A. Sir?

5 Q. Accused of killing his wife; right?

6 A. Accused, yes--

7 BY MR. EVANS: --Your Honor, that is not
8 relevant what is going on trial. The only question
9 is the percentage of jurors.

10 BY MR. LUMUMBA: Yeah, I think it's relevant.

11 BY MR. EVANS: Not at all.

12 BY THE COURT: Well, how is it relevant?

13 BY MR. LUMUMBA: Well, it is relevant because
14 it discloses that-- what we are concerned about is
15 systematic exclusion of blacks from jurors in a
16 case which involves a black defendant. That's what
17 we are concerned about.

18 BY THE COURT: Well, the case across the hall
19 has got nothing to do with that. Go ahead and ask
20 a question about this case.

21 BY MR. LUMUMBA: Well, I know it doesn't, so
22 why didn't you tell him that when he raised it?

23 BY THE COURT: Well, you didn't object.

24 BY MR. LUMUMBA: Okay, good; that's a good
25 one. I will go with that. I will go with that,
26 okay.

27 BY MR. LUMUMBA:

28 Q. Now let me ask you this. It has nothing to do
29 with this; good. We will forget about the case across the

1 hall. Okay, now have you bothered-- I know you have sent us
2 questionnaires; is that correct? You sent us--

3 A. --I send copies, yes.

4 Q. Yeah, you either send them to us or had somebody
5 send them--

6 A. Well, I had someone. I have ten employees.

7 Q. Yeah, and did you bother to go through there and to
8 calculate how many blacks are in that pool and--

9 A. --No, sir.

10 Q. --how many, okay. You know Brian Neely, don't you?

11 A. I know Mr. Neely.

12 Q. And he does practice here?

13 A. He does.

14 Q. He does practice, and he does try cases in this
15 court?

16 A. Some.

17 Q. Well, I mean all lawyers try some; right?

18 A. Right.

19 Q. And you don't have--

20 BY MR. EVANS: --Your Honor, that is not
21 relevant to what we are here on today. It has
22 absolutely nothing to do with it and I object.

23 BY MR. LUMUMBA: I have got an affidavit--

24 BY THE COURT: --I'm going to let him make his
25 record. Go ahead.

26 BY MR. LUMUMBA:

27 Q. And so he would be in a position to see jurors in
28 cases that he tries; right?

29 A. Yes, sir.

1 Q. And he comes in the courthouse sometimes when other
2 people are trying cases; right?

3 A. Probably so. I don't know. Probably.

4 Q. Okay, so let me ask you this. Was the jury that
5 tried this case the first time all white?

6 BY MR. EVANS: Your Honor, that is not the--

7 BY THE WITNESS: --I don't know--

8 BY MR. EVANS: --point of this Motion. The
9 Motion is the jury pool, not who ended up on the
10 jury. It has absolutely nothing to do with the
11 folks that found some reason to get themselves
12 excused for cause. It has nothing to do with who
13 ended up on the panel. It is strictly the panel--
14 he has got his burden to show that there is some
15 systematic exclusion of blacks from the jury panels
16 in this case, not from jury trials, from the
17 panels.

18 BY THE COURT: That is the issue. It's the
19 pool, not the jury.

20 BY MR. LUMUMBA:

21 Q. Okay. How many blacks was in the pool for that
22 case? Do you know?

23 A. You are talking about this case?

24 Q. Uh-hum, the last time.

25 A. Sir, I don't remember. We have so many cases here
26 in Lee County. You know, I don't remember. I really don't
27 remember.

28 Q. Well, do you know if-- do you know whether or not--
29 do you know the percentages of blacks on juries over the past

1 ten years?

2 A. No, sir. I don't.

3 Q. So would it be safe to say that you cannot say with
4 any certainty that there has not been less than two blacks on
5 juries--

6 BY MR. EVANS: --Your Honor--

7 BY MR. LUMUMBA: --Excuse me. Let me--

8 BY MR. EVANS: --Again I object because the
9 issue is not who has served on juries, but who has
10 been on the pools that have been drawn, and I
11 object to the question.

12 BY MR. LUMUMBA: I will rephrase the
13 question.

14 BY MR. LUMUMBA:

15 Q. Do you know, would you-- do you know what is the
16 percentage of blacks that have been in jury pools over the
17 last ten years?

18 A. No, sir.

19 Q. Okay. If Mr. Neely has said that it's far less
20 than 21 percent, and in fact, that it's less than 10 percent;
21 would you disagree with that?

22 A. I have no way of knowing where Mr. Neely got his
23 figures. I don't know.

24 Q. I'm not asking where he got his figures.

25 BY MR. EVANS: Your Honor, she is answering
26 the question that she cannot answer that.

27 BY MR. LUMUMBA: No, no--

28 BY THE WITNESS: --I don't know.

29 BY THE COURT: I don't know is a complete

1 answer.

2 BY MR. LUMUMBA: "I don't know" is a fine
3 answer. I have no problem with that.

4 BY THE WITNESS: Yeah, I don't know.

5 BY MR. LUMUMBA: If he will just be quiet so
6 she can answer questions--

7 BY MR. EVANS: --but I won't.

8 BY MR. LUMUMBA: --we will be all right. We
9 will be all right.

10 BY MR. LUMUMBA:

11 Q. Okay, the situation-- so you cannot tell this Court
12 that blacks have not been underrepresented in terms of the
13 percentage of the population over the last ten years on
14 virtually all the juries, jury pools?

15 A. I don't know.

16 BY MR. LUMUMBA: Okay, all right. I have no
17 further questions of this witness.

18 BY THE COURT: You may return--

19 BY MR. EVANS: One minute, Your Honor.

20 BY THE COURT: I'm sorry. We are going to
21 keep you moving.

22 REDIRECT EXAMINATION BY MR. EVANS:

23 Q. You were asked about certain beats in this county.
24 The juries are not drawn from certain beats, are they?

25 A. No, sir. The master list is printed
26 alphabetically, and there is nothing to do with the districts
27 or the beats. There is a complete alphabetical list. If one
28 person registers to vote tomorrow, then that would throw
29 every, all of those sequence out of line.

1 Q. So the registered voters, whether they be black or
2 white or any other race, are all in there--

3 A. --Yes.

4 Q. --and how they come out is just random selection by
5 the computer?

6 A. Correct.

7 BY MR. EVANS: Nothing further, Your Honor.

8 BY THE COURT: Now you can go.

9 WITNESS STEPS DOWN.

10 BY THE COURT: Anything further?

11 BY MR. EVANS: No, sir.

12 BY MR. LUMUMBA: Only the testimony we are
13 going to proffer that would be taken at a different
14 date.

15 BY THE COURT: Okay, those witnesses had to be
16 here today. This is one of the motions to be
17 heard. The Court relies on Harris v. State, 576
18 So.2d 1262. It's a Lowndes County case; it
19 involves the same issue that is here. The
20 testimony of the Circuit Clerk of Lowndes County in
21 that case was substantially the same as Ms.
22 Loftin's was in this case as to how the jury was
23 selected. In that case, in the Harris case, which
24 correctly states that it's a Swain question, but
25 then quotes Taylor v. Louisiana, a United States
26 Supreme Court 1975 case, where it says you are
27 entitled to a jury drawn from a cross section of
28 the community, but it does not require, "There is
29 no requirement that petit juries actually chosen

1 must mirror the community and reflect the various
2 distinctive groups in the population. But the jury
3 wheels, pools of names, panels, or venires from
4 which juries are drawn must not systemically
5 exclude distinctive groups in the community and
6 thereby fail to be reasonably representative
7 thereof."

8 The evidence in this case, the only credible
9 evidence in this case is they were selected as
10 pursuant to statute by a computer randomly, and
11 there was no indication of race even placed in the
12 computer. Therefore, this Motion is without merit,
13 and it's overruled. Okay.

14 BY MR. LUMUMBA: You only ruled on half the
15 Motion.

16 BY THE COURT: Okay. On the questionnaire,
17 both sides submitted, after we had the hearings,
18 both sides then submitted questionnaires to me that
19 were not consistent with what we talked about in
20 some regards. The Court determined then-- one, the
21 questionnaire is discretionary in any event. Its
22 only purpose is to give you some information ahead
23 of time. It's not for the purpose of voir diring
24 the jury. The Court decided that since there was
25 discrepancies between what both sides wanted, I
26 would rely on the questionnaire that was issued in
27 the first case, and that was the one that the Court
28 entered, and the Court did that. And that probably
29 was different than what my order was, but that's

1 why I did it, and that ground is without merit
2 too.

3 BY MR. LUMUMBA: Oh, I see. So the Court was
4 aware of the fact that it was sending out a
5 questionnaire that was inconsistent with its
6 order?

7 BY THE COURT: Yes, sir.

8 BY MR. LUMUMBA: Okay. And the Court would
9 acknowledge, of course, that it never informed us
10 that it had decided to do that?

11 BY THE COURT: Well, I sent you the
12 questionnaire. Now whether--

13 BY MR. LUMUMBA: --No, the last questionnaire
14 we received before-- in fact, the last time we saw
15 a questionnaire was when the prosecution sent us
16 the questionnaire which had been--

17 BY THE COURT: --I am telling you I mailed it
18 to you. Now whether you got it is another story.

19 BY MR. LUMUMBA: No, you didn't mail us that
20 questionnaire.

21 BY THE COURT: Oh, yes, sir; I did.

22 BY MR. LUMUMBA: No, no, no. I think that if
23 you would look back, Judge, we got a questionnaire
24 before we had the hearing, and then that was the
25 basis of the hearing. We made the motion. Now
26 Judge, you just told me earlier that we didn't file
27 a motion, and we have got one from December 30th,
28 1997, so sometimes I know what I'm talking about.
29 What happened here is that you sent us a

1 questionnaire. We sent in an alternative
2 questionnaire, and that's what brought about the
3 inquiry. Then in a hearing you decided that they
4 should put the race question in there as long as it
5 applied to both blacks and whites. They presented
6 to you a questionnaire which had both blacks and
7 whites. You had already overruled several of the
8 questions, all of our questions except for the one
9 on race. You had already thrown that out. Then
10 they sent it in and then after that, you are now
11 telling us you sent the questionnaire to the jurors
12 which you did not send to us again. We had no way
13 to know that you had decided to use the original
14 questionnaire after you had ordered that another
15 question be put in it.

16 Now if-- you know, that's what the record
17 should reflect. Now you may have forgotten and
18 thought you sent the original questionnaire to us
19 afterwards, but you sent it first. That's why the
20 issue arose.

21 **BY THE COURT:** Well, let the record reflect
22 that the Court sent the questionnaire to Mr.
23 Lumumba. Whether he got it or not is another
24 story. I put it in the mail. The other thing is I
25 am not limiting anybody from asking these questions
26 on voir dire if they are appropriate, and the
27 questionnaire is not for the purpose of voir dire.
28 So the Motion is overruled.

29 **BY MR. LUMUMBA:** Well, let he just point this

1 out. Of course, you have put us at great burden.
2 You alleviate the prosecution from the problem of
3 having to ask questions about who has a problem
4 with the death penalty, and at the same time you
5 leave us the burden of having to ferret out who has
6 a situation where it is supportive of the death
7 penalty and will automatically give it.

8 **BY THE COURT:** No, I'm going to ask that
9 question. You won't have to worry about that. The
10 Court is going to ask that question.

11 **BY MR. LUMUMBA:** Well, the same thing is true
12 about the race question.

13 **BY THE COURT:** And the Court is probably going
14 to ask that question, so I'm going to relieve you
15 of that responsibility.

16 **BY MR. LUMUMBA:** Well, I don't know--

17 **BY THE COURT:** --Then if you don't like the
18 way I ask it, then you will be able, entitled to
19 follow up on it.

20 **BY MR. LUMUMBA:** It would have been nice if we
21 could have gotten that kind of even handedness in
22 the questionnaire that was sent out, Judge.

23 We at this time would bring before the Court a
24 Motion to Suppress Identification Evidence. The
25 problem--

26 **BY THE COURT:** --First, I have got a
27 question. Now these are two motions that were
28 filed yesterday? That's when I got them.

29 **BY MR. LUMUMBA:** They were filed-- let me tell

1 you when they were filed. Just hold on a minute.

2 BY MR. EVANS: We received the motions--

3 BY MR. LUMUMBA: --They were filed August
4 31st--

5 BY MR. EVANS: --he is talking about
6 yesterday, and we are not prepared to go forward on
7 that at this point.

8 BY MR. LUMUMBA: August 31st is when they were
9 filed.

10 **BY THE COURT:** Okay, that was Monday. I
11 didn't get, I received my copy on September 1st. I
12 assume if you mailed them, they must have received
13 them about the same time.

14 BY MR. LUMUMBA: Probably.

15 **BY THE COURT:** If they are not ready to go
16 forward on that motion, I'm not going to hear it
17 today.

18 BY MR. LUMUMBA: Okay.

19 **BY THE COURT:** I tell you what I want to do on
20 that. One, you can obviously, those things you can
21 raise at trial. If we get a jury or once we get a
22 jury in this case, then depending on what our
23 situation is, then I might be in a position then to
24 go ahead and hear those motions before we start
25 taking testimony. So I advise everybody to have
26 every witness that they want on those two motions
27 needs to be present from day one to testify when I
28 get a break to do it. I will try to hear them, I
29 will try to hear them at that time. If not, you

1 have got a right to object to that when it comes
2 up.

3 BY MR. LUMUMBA: Okay, well, let me ask you
4 this, Judge. We have got Motions to Suppress
5 Statements, Motion to Suppress Identification
6 Evidence, and Motion to Suppress Evidence. Does
7 that apply to all three of those?

8 BY THE COURT: Yes, sir. They are entitled
9 to be prepared on them.

10 BY MR. HORAN: We don't have a Motion to
11 Suppress Evidence. Which one is that?

12 BY THE COURT: I don't think I got but two.
13 I think I got the identification and the one about
14 the gunshot residue. I got those two.

15 BY MR. LUMUMBA: Yeah, the one about the
16 gunshot residue is the Motion to Suppress Evidence.

17 BY THE COURT: Okay, well, I got that one.

18 BY MR. LUMUMBA: They were all filed on the
19 same day. But if they didn't get it, I have got an
20 extra copy.

21 BY MR. EVANS: Your Honor, also just for the
22 record, I understand that some of these things
23 opposing counsel has a right to raise even at
24 trial. I don't disagree with that. I would like
25 to again point out in the record that there was a
26 deadline of, I think, July 1st for these motions to
27 be filed, and we are still as late as yesterday
28 getting motions.

29 BY MR. LUMUMBA: Well, let me say this, Judge,

1 and, you know, just to address that; the Court can
2 if you want. You know, we have done the best we
3 can to ferret through a lot of information, and as
4 we ferret through it, things come up which we
5 didn't see or notice before. Now perhaps that is
6 ineffective assistance of counsel. If it is, let
7 it be-- you can state so on the record so Mr.
8 Flowers--

9 BY MR. EVANS: --That's an attempt to try to
10 make it look like it's--

11 **BY THE COURT:** --I'm not falling off into that
12 swamp, okay.

13 BY MR. LUMUMBA: Okay. But in any event, I am
14 just telling you what happened. I mean I have
15 raised these issues. I raised these issues as we
16 get them--

17 **BY THE COURT:** --Let me say this. I think you
18 are entitled to raise them, and I will have to
19 cross those bridges when I come to them. If you
20 have waited, if you have jeopardized your case by
21 waiting too late to do it, then that is just the
22 way it falls. But I will reserve any rulings on it
23 until we get there.

24 BY MR. LUMUMBA: Right. Well, our position is
25 we would like to hear them before the trial, but if
26 the Court has ordered that we hear them at the
27 trial, we would like to hear them before those
28 witnesses testify.

29 **BY THE COURT:** I will do my best to

1 accommodate you on that.

2 BY MR. LUMUMBA: Okay. We also-- hold on a
3 minute.

4 (Defense Counsel confer briefly.)

5 BY MR. LUMUMBA: There is-- we asked at one
6 point in time for the District Attorney to provide
7 us with all the information relevant to the other
8 persons who they were investigating for this case.
9 I am reminded-- and we never got it. And what
10 reminded me of that was that I was reading through
11 the newspaper articles, and there was some people
12 arrested in another state. And the newspaper
13 article talks about them being arrested and that
14 they felt they were guilty of some murder that had
15 occurred in that state, and I can't remember what
16 state it is, and that they felt there was some
17 connection to this murder here. But we knew before
18 that that was, from having talked to people, that
19 that was something that the prosecution had
20 maintained at one time, or not the prosecution, but
21 the police had maintained that somebody else was
22 responsible for this.

23 We would like to get all the information
24 relevant to that. We don't get any information on
25 that. All the discovery we got, none if it talked
26 about those other folks or what led them to the
27 conclusion that they were involved or which led
28 them to investigate. That is clearly Brady
29 material, Brady being the case which says we can

1 have any information which may be favorable to the
2 defense. And we are the ones that decide whether
3 it is favorable to us and not the prosecution. And
4 that is something I think would be favorable, at
5 least to look at. Now it might not have any
6 significance at all. The Court will determine
7 whether it is relevant, but we would like to get
8 that.

9 BY MR. EVANS: Your Honor, there is nothing to
10 furnish as to, which points to anyone else as a
11 defendant in this case. We knew from day one who
12 had committed this crime, and there is no evidence
13 that I am aware of that points a finger at anyone
14 else.

15 BY MR. LUMUMBA: They knew from day one and
16 waited until seven months later to make an arrest.

17 BY MR. EVANS: That's right, and I would be
18 glad to go into all the details, but I don't think
19 we can.

20 BY THE COURT: Well, y'all spare me that,
21 okay. He said he has furnished it. If you find
22 that not to be true, then I can look at it at that
23 time.

24 BY MR. LUMUMBA: Okay. We want-- there is an
25 expert, expert which the Court has declared to be
26 an expert of everybody. His expenses has to be
27 paid, surprise to everybody who can pay them. The
28 Court, we have a bill for - what is it? -
29 \$1,100.00?

1 **BY THE COURT:** Just submit me an order with an
2 itemized statement to it and I will sign it.

3 BY MR. LUMUMBA: Okay. We will give you an
4 itemized order.

5 BY MR. EVANS: Your Honor, while we are on the
6 expert; so that we know whether or not we need to
7 have him subpoenaed for certain dates, it would be
8 good at this point if we could know what dates the
9 expert is going to be here for testimony.

10 **BY THE COURT:** You are asking me?

11 BY MR. EVANS: I was asking you to ascertain
12 for us so that we will know whether he is going to
13 be here during the time that we would need him or
14 if he would need to subpoena him separately since
15 he is an independent expert that the Court has
16 already, I believe from the order I saw, ordered
17 how much he is going to be paid to be transported.
18 I would just like to know when he is going to be
19 transported so that we could make arrangements
20 where he wouldn't have to be transported twice.

21 **BY THE COURT:** Okay, that is up-- the Court
22 has appointed pursuant to 706 an expert who has now
23 made his analysis and given everybody a copy of
24 that. I don't-- neither one of you have to call
25 him. You know, neither one of you may want to call
26 him, or you may both want to call him. I don't
27 know; that is up to y'all. Y'all issue the
28 subpoena. If you want him here, issue the subpoena
29 for the first day. He will just have to stay. I

1 mean I can't answer that. If you want him,
2 subpoena him for the first day and the same thing
3 for Mr. Lumumba. If he wants him, he has got to do
4 that. Y'all don't issue the subpoenas, that's it.
5 I'm going to pay him consistent with-- if he comes,
6 I will pay him consistent with the schedule that is
7 in the order.

8 BY MR. EVANS: The only problem with that-- I
9 haven't got the order. It has been a while since I
10 read it, but I was thinking the order was that he
11 had to come down here, back one day and testify and
12 fly back out--

13 BY THE COURT: I don't think that's what that
14 order said, and if y'all want him to testify,
15 either side wants him to testify, we will see that
16 he gets here and gets paid.

17 BY MR. EVANS: Yes, sir.

18 BY MR. LUMUMBA: Okay. So Judge, my
19 understanding is now we have this exchange date for
20 audio tapes which is Tuesday at 1 o'clock? Is that
21 where--

22 BY THE COURT: You aren't going to make me go
23 back through it again. I will never remember what
24 all I said.

25 BY MR. LUMUMBA: No, no; I am trying to
26 remember. I am just trying to make sure. I
27 thought where we ended it, they are going to supply
28 us with the audio tapes at 1:00. We are going to
29 supply them at 1:00. The videotapes is where you

1 said that all we have got to do is notify each
2 other, and if we want them, we have got to come
3 and--

4 **BY THE COURT:** --Is that right?

5 BY MR. LUMUMBA: Is that right? I mean if
6 that is not right, straighten me up. That's all I
7 am trying to do. Okay, what do you want to do?

8 **BY THE COURT:** What does it take-- how do you
9 go about copying those things?

10 BY MR. EVANS: We do not have any equipment to
11 copy it. All we can do is turn the tape recorder
12 on, put another tape recorder down beside it. It
13 would probably take, it is going to take a good
14 many hours.

15 **BY THE COURT:** Well, I will be honest with
16 you. If y'all find somebody that has got a dual
17 tape deck, you can dub it from one tape to another,
18 and you can do it in about five minutes.

19 BY MR. EVANS: I don't know anybody that has
20 got one for the small--

21 **BY THE COURT:** --I have got one, but I'm not
22 going to let y'all use it.

23 BY MR. LUMUMBA: You have got one for the
24 small tapes, Judge?

25 **BY THE COURT:** I don't have one for the small
26 tapes.

27 BY MR. EVANS: This is microtapes.

28 **BY THE COURT:** Okay, Radio Shack, I don't know
29 whether they have got one or not in Kosciusko.

1 BY MR. LUMUMBA: Okay, so where are we at?
2 That's all I want to know. Where are we at?
3 Because if we have to come up here--

4 BY THE COURT: Do you have transcripts? Are
5 there transcripts of what is on the tapes?

6 BY MR. EVANS: Yes, sir. They have
7 transcripts.

8 BY THE COURT: Why don't y'all just listen to
9 them and see if they match the transcript, and that
10 will take care of that?

11 BY MR. LUMUMBA: Okay, why don't we do this?
12 We will-- if that's what the Court's order is, we
13 will do that. But you are saying that if we do
14 bring an extra tape, we can go ahead and copy it?

15 BY THE COURT: Sure.

16 BY MR. LUMUMBA: All right, we will do that.
17 And they have the same invitation.

18 BY THE COURT: Right.

19 BY MR. EVANS: Your Honor, we have no problem
20 with it and have not from the beginning. The only
21 thing, I don't want to make people available all
22 day long waiting on them if they are not going to
23 come.

24 BY THE COURT: Well, all I can say is they say
25 they are going to come.

26 BY MR. LUMUMBA: So is that 1 o'clock Tuesday
27 good, or do we need to get another date? I don't
28 know.

29 BY MR. EVANS: That will be fine with us.

1 **BY THE COURT:** Well, I tell you; where are
2 y'all going-- I put that at the courthouse. Now
3 the problem I have got with that is I am going to
4 be in the middle of that. I have got all kind of
5 hearings and everything going on. Y'all got a
6 grand jury--

7 **BY MR. HORAN:** --We could go to the chancery
8 building.

9 **BY THE COURT:** Y'all have got a grand jury
10 meeting there.

11 **BY MR. EVANS:** We have got a grand jury there.

12 **BY MR. HORAN:** We can go to the chancery
13 building or somebody can.

14 **BY THE COURT:** Yeah, okay. Y'all meet at
15 the--

16 **BY MR. FREELON:** --Excuse me. We are going to
17 do the taping?

18 **BY MR. LUMUMBA:** Yeah.

19 **BY THE COURT:** That's what he said.

20 **BY MR. FREELON:** If we are going to do the
21 taping, I need to set the time based upon my
22 calendar--

23 **BY MR. EVANS:** --Here we go playing games.

24 **BY THE COURT:** Well--

25 **BY MR. FREELON:** It's not playing any games.
26 We are talking 5 or 6 hours. I need to look at my
27 calendar to determine if I have 5 or 6 hours
28 available at that point in time to tape all the
29 conversations.

1 **BY THE COURT:** Well, everybody else has got a
2 schedule too, Mr. Freelon.

3 BY MR. FREELON: I understand that.

4 **BY THE COURT:** You know, I mean both of these
5 guys have got term of court starting in Attala
6 County Monday, and they have got-- there is a
7 capital case to be tried next week. So--

8 BY MR. FREELON: --My point is--

9 **BY THE COURT:** --you are just going to have to
10 work it out. If you want the stuff, you are going
11 to have to work it out.

12 BY MR. FREELON: So if I don't get it on that
13 day, it will not be available? Is that--

14 BY MR. HORAN: We will accommodate him, Your
15 Honor.

16 **BY THE COURT:** I know. I think they will
17 accommodate. They will accommodate. My order is
18 that you be there at 1 o'clock on Tuesday. And
19 then if y'all can work out something different than
20 that, that is certainly okay with me.

21 BY MR. LUMUMBA: That is in which county?

22 **BY THE COURT:** That's in Attala. And I think
23 you can probably use-- y'all can meet at the
24 courthouse, and you can probably use the chancery
25 building. That courtroom will probably be open,
26 and it's a good facility for doing that.

27 BY MR. LUMUMBA: Is this all the physical
28 evidence? I don't think it is.

29 (NOTE: Referring to exhibits from first trial

1 which were spread out on the rail of the jury box
2 in the courtroom where the Court Reporter had been
3 premarking exhibits for this trial.)

4 **BY THE COURT:** I don't know.

5 BY MR. EVANS: I don't know if it's all of it
6 or not.

7 BY MR. HORAN: No, it's not all of it.

8 BY MR. LUMUMBA: I would like--

9 **BY THE COURT:** --All of it is here. I even
10 think the stuff at the Crime Lab is back here now,
11 isn't it?

12 BY MR. HORAN: Judge, the only thing that is
13 not here is some photographs and stuff that were
14 sent to the Supreme Court that we will have to get
15 duplicated or get withdrawn. But for the most
16 part, that is everything--

17 **BY THE COURT:** --except what the Supreme Court
18 has?

19 BY MR. HORAN: Right, that was introduced.

20 **BY THE COURT:** Y'all will be entitled to look
21 at that stuff at the Supreme Court in Jackson where
22 you are located.

23 BY MR. LUMUMBA: Okay.

24 BY MR. HORAN: I doubt we are going to
25 withdraw-- we are probably just going to get
26 duplicates of it. It will be easier--

27 **BY THE COURT:** --What I'm saying, for the
28 purposes of them being able to inspect it, they
29 have got access to that.

1 BY MR. HORAN: Right.

2 BY MR. LUMUMBA: Okay, so this evidence here
3 is all, or do you have some somewhere else?

4 BY THE COURT: The Supreme Court.

5 BY MR. LUMUMBA: No, okay, I know there is
6 some at the Supreme Court, but I'm saying other
7 than the Supreme Court stuff, is this everything
8 here?

9 BY THE COURT: Well, it's in this courthouse.
10 Whether it is sitting over here I don't know. Ms.
11 Loftin is here.

12 BY THE CLERK: Everything is here.

13 BY MR. LUMUMBA: Everything is here, okay. So
14 we can have an opportunity to look at it today, we
15 would appreciate it, if that is not a problem.

16 BY MR. EVANS: I thought you did that the last
17 time you were here. You went through the boxes.

18 BY THE COURT: Anything further?

19 BY MR. HORAN: You had a motion, a Defendant's
20 motion that hasn't been brought up.

21 BY MR. LUMUMBA: We have a Motion to Exclude
22 from evidence the conviction of the Defendant. The
23 conviction occurred after the alleged incident, and
24 consistent with another analysis I thought the
25 Court was addressing earlier, should not be allowed
26 to impeach him should he take the stand or
27 introduced in any other way. He was, his
28 conviction-- and it would certainly be more
29 prejudicial than probative, the fact that he was

1 convicted in this case.

2 **BY THE COURT:** I understand. Let me take that
3 motion under advisement. I know what your point
4 is. I'm not trying to cut you off, but I know what
5 your point is, and I want to do some research on
6 that myself. And you are entitled to renew that at
7 the beginning of the trial or at such time before
8 he testifies. Of course, it is not admissible
9 unless he testifies.

10 **BY MR. LUMUMBA:** Y'all have any other motion?

11 **BY MR. HORAN:** No, I don't think there is
12 anything substantive.

13 **BY THE COURT:** Anything else, gentlemen?

14 **BY MR. LUMUMBA:** Judge, there is nothing that
15 I can think of right now.

16 **BY THE COURT:** All right. See y'all soon.
17 Court is adjourned.

18 **HEARING OF SEPTEMBER 2, 1998 CONCLUDED.**

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1 ON SEPTEMBER 14, 1998, THE COURT CONVENED IN
2 CAUSE NUMBER CR 97-372 IN TUPELO, LEE COUNTY, MISSISSIPPI, AT
3 8:00 A.M. FOR THE CONSIDERATION OF MOTIONS BEFORE THE SCHEDULED
4 TRIAL TO BEGIN ON THIS DATE AT 9:00 A.M. PRESENT REPRESENTING
5 THE STATE OF MISSISSIPPI WERE HONORABLE DOUG EVANS, DISTRICT
6 ATTORNEY, AND HONORABLE KEVIN HORAN AND HONORABLE WALTER BLECK,
7 ASSISTANT DISTRICT ATTORNEYS; AND PRESENT REPRESENTING THE
8 DEFENDANT WERE HONORABLE CHOKWE LUMUMBA AND HONORABLE HARVEY
9 FREELON. PROCEEDINGS IN CHAMBERS WITH THE DEFENDANT ALSO
10 PRESENT WERE AS FOLLOWS:)

11 BY MR. LUMUMBA: Judge, a couple of things we
12 wanted to raise. Actually, we have submitted an
13 amendment to our Motion to Change Venue. Actually we
14 asked for a reconsideration of the Motion to Change
15 Venue, and I want to-- I have already sent I think
16 you and the DA some additional exhibits. I believe I
17 got--

18 **BY THE COURT:** --I didn't get them.

19 BY MR. LUMUMBA: You didn't get them. Okay.
20 I'm going to ask--

21 BY MR. EVANS: I may have.

22 BY MR. LUMUMBA: I'm going to ask that this be
23 marked to put in the-- and the nature, and the nature
24 of the exhibits that we are submitting in addition to
25 the ones that we have done already are basically
26 exhibits which demonstrate that the media coverage of
27 this case, of course, has not discontinued. They
28 did, and for the most part what these cover is the,
29 is the last hearing, coverage of the last hearing.

1 And then in a couple of instances you do have some
2 other coverage from the Winona paper. I think this
3 is January 1930 [sic]. This is-- let me see what it
4 is. You have got "Winona Multiple Death Trial Will
5 Change Venue." That was not from the Winona paper;
6 I'm sorry. That is from the paper here, the paper
7 here in this area which is the Daily Journal. Then
8 we have, "Jurors to Hear Death Row Inmates Trial."
9 That is a Clarion Ledger situation, and then finally,
10 we have another one from the Commercial Appeal which
11 is "Ex-Employee Held in Slaying of Four at Winona
12 Store." That was covered back some time ago during
13 the, prior to the first trial.

14 And we have Mr. Bradley is-- you can sit right
15 there.

16 Okay, then we have "Ex-Furniture Store Worker
17 Pleads Innocent In Slaying." That was also, I am
18 sure, from the Winona paper. What we want to also do
19 is submit at the last-- we had subpoenaed for the
20 last hearing, but it didn't show up, WCBI. I think
21 we played a tape from the other station. This is not
22 long. The Court can look at it, but it's, I'm going
23 to ask that it be marked. But it's an exhibit which
24 also shows media publicity.

25 And what we think these additional submissions
26 tell the Court, first of all, we did submit a Motion
27 for Reconsideration, and attached to the Motion for
28 Reconsideration we attached affidavits which actually
29 came in on the day that we were here the last time.

1 I think that is 2nd of September or the 3rd of
2 September, whichever day we were here for the last
3 hearing.

4 There were two affidavits from Walter Stanphill
5 and a woman by the name of Earline Gardner, long time
6 residents of this community. Both of the affidavits
7 articulate that they have talked to a number of
8 people in the community, that they are active in the
9 community; they have been here for years and years
10 and years, and that they do not feel that the
11 community would give Mr. Flowers a fair trial in
12 that, in fact, the community is steeped with bias
13 against the case principally because they have all
14 been told he is guilty already. They had been told
15 that by the newspaper, the TV, and by twelve jurors
16 who sat here some time ago who live amongst them that
17 he is guilty of this very crime and this very case
18 which we are sitting here for today. So that is the
19 reason why they don't feel, and people have said as
20 much to them.

21 We would also point out to the Court that the
22 Court did indicate in its ruling several things. One
23 was that the affidavits weren't in. We got the
24 affidavits in, albeit they were a bit late. I would
25 suggest to the Court that we subpoenaed them to be in
26 on time. The Court set this particular date. We did
27 everything we could to get people here. We
28 subpoenaed them. In the case of Stanphill, he does
29 have a position of, with Legal Services here in this

1 area. He was tied up with another court. When he
2 got here, he actually had both affidavits. He was
3 carrying them. He had gotten the other one for us
4 from the lady who submitted it.

5 We asked for a continuance until later on on
6 that case or to hold off and not to decide it until
7 later that day. The Court saw fit to proceed, but
8 now that it has this information, we would hope that
9 it would take it in consideration. The same thing
10 would be true of the tape, of the videotape which we
11 have put before the Court.

12 And in a different argument the media publicity,
13 which represents the publicity from the hearing
14 itself, obviously could not be produced until after
15 the hearing was held, but it was anticipatable that
16 that would occur, and it did, in fact, occur.

17 We would also point out to the Court; the Court
18 indicated that we had not filed a motion prior to the
19 time the selection of or the pulling of the venire or
20 the pool as we call it here in Mississippi. What
21 really is true is that we had submitted a motion, and
22 that was in December 30th. It was filed, I think it
23 was marked something like December 28th that it was
24 prepared, of 1997, and that was well before the
25 venire was selected in this case. And the Court, I
26 cited a couple of instances in the record where the
27 Court did come forth and indicated especially in
28 January that we could file this motion at any time.
29 And then I think at a later date in March the Court

1 came back and reiterated that, however did indicate
2 that it did not want the motion to be filed in a
3 dilatory, I think, manner or something like that.

4 And so those were the times that the Court spoke
5 on it. It spoke on it once in January, and it spoke
6 on it once in March. Both indications to us was that
7 we could proceed on this venire, on this motion. We
8 did not, were not dilatory in it. We sought as much
9 help as we could here in this area. Of course, we
10 have been denied a number of experts by the Court,
11 one of them I believe was an expert that we sought in
12 the area of the death penalty expert who could have
13 assisted us in some of these things and investigated,
14 and could have assisted us in some of these things,
15 but we were unable to obtain it.

16 The other thing that I guess I would say in
17 relationship to that Motion is that the Court
18 indicated, if I'm not mistaken, that there was no
19 evidence that the venue was biased. I think the
20 testimony of Bland has to be considered as evidence
21 that the venue is biased. The affidavits have to be
22 considered as evidence that the venue is biased, and
23 the testimony of Mr. Muhammad who testified has to be
24 considered as evidence that the venue is biased.

25 And the final thing is I would just, you know,
26 indicate to the Court that in addition to saying that
27 we do stand by the thing that we have, you know, the
28 information we have put in our motions is that it
29 would be very difficult, I would think. And I was

1 met somewhat by a fellow colleague from the Bar and
2 just people in general when they read the news that
3 the trial was staying here, with a sense of alarm and
4 shock that a case where a man has been convicted of
5 the very same charge, the very same case, that we
6 would try to try it in the same venue and in some way
7 convince ourselves that there is no bias going to
8 attach. So I would move for the change of venue and
9 for reconsideration of that Motion.

10 BY MR. EVANS: Your Honor, very briefly in
11 response, I would like to point out that this new
12 news that he talks about is at their insistence.
13 They had a press conference called for the day that
14 we had the last motions here. This press conference
15 was called by the Mississippi Coalition for Justice,
16 if there is such a group. I cannot find any such
17 group registered in Mississippi. This group through
18 Muhammad who is an associate, even though he lied at
19 the previous trial, is associated with Defense
20 Counsel which Defense Counsel admitted in part of his
21 argument when we were here before. This press
22 conference that they called is why the news was out.

23 Also, in an attempt to tamper with the jury,
24 which I would ask that sanctions be imposed in this
25 case, the Defense or the Defense through this group,
26 one or the other, issued three page pamphlets all
27 over cars in this county. Information in those
28 pamphlets, some of the information was only known by
29 the attorneys in this case. So it had to be

1 disseminated by the Defense Attorney in this case.
2 This information which I think amounts to gross
3 misconduct by attempting to get information out in
4 front of the jury which may or may not be admissible
5 evidence in trial is definitely improper, and at the
6 absolute least is an attempt to tamper with the
7 jury. It is also an attempt to get information out
8 there to try to force a change of venue in this
9 case. And I would think that the Court should at the
10 least as far as a change of venue, completely
11 disregard any information that they have purposely
12 gotten out to the people.

13 BY MR. HORAN: Your Honor, the only other thing
14 is Mr. Lumumba in his motion for the Court to
15 reconsider attached as an exhibit some of the rulings
16 by this Court at the March 3rd hearing where the
17 Court told Mr. Freelon exactly procedurally what the
18 Court felt like the proper procedure was as far as a
19 change of venue. At no time did they say, did you
20 say that at any time a change of venue would be
21 considered. In fact, I think on the third page of
22 that exhibit you make the comment that they would
23 have to file it in the proper fashion, proper manner,
24 and - I'm not quoting you - but you said in a time
25 close enough to the time in which we are going to
26 draw this jury panel, and you informed Mr. Freelon on
27 the record that he would have to do that.

28 Now once you informed him of that, that put him
29 on notice that they needed to do something before the

1 venire was pulled. The reason behind that is because
2 the law is clear and the statute says after you pull
3 that venire, nothing can be considered for change of
4 venue that happened prior to that. Only things that
5 have occurred after the pulling of the venire is
6 there, can there be a ground for a change of venue.
7 And I specifically read the exhibit that they sent,
8 and I saw that. It's on the top of the third page, I
9 believe, and I think the Court will remember that
10 that is exactly what you told them, that they were
11 going to have to not be dilatory in filing their
12 change of venue. And you did deny it at that time.
13 You did not say you would not revisit it. You just
14 said you would revisit it if they did it in a timely
15 and proper fashion.

16 BY MR. LUMUMBA: The gentleman is talking about,
17 presumably not talking about the comments made on the
18 5th of January because that's not--

19 BY MR. HORAN: --It's March.

20 BY MR. LUMUMBA: That is not what is said on the
21 5th of January.

22 BY MR. HORAN: No, in March.

23 BY MR. LUMUMBA: Right. So we probably
24 shouldn't ignore the 5th of January either. We
25 probably should try to take all this in
26 consideration. But on the 5th of January it says,
27 "As I have done with the motion when I ruled on it
28 previously, I overruled the Motion at this time
29 because nothing has been presented to the Court that

1 would show that this person could not get a fair and
2 impartial trial in Lee County." And I would actually
3 take issue with that. The fact that the man was
4 convicted and all the newspapers carried it and he
5 was convicted by a jury in Lee County probably should
6 have been enough, and I believe probably legally is
7 enough to get a change of venue. "However, if that
8 is presented to the Court or if during voir dire it
9 becomes apparent from the questioning of the venire
10 at that time that the Defendant cannot get a fair
11 trial in Lee County, the Court will sustain the
12 Motion for Change of Venue and move it to another
13 jurisdiction." And "What is next?"

14 And then it says, "The Defendant has a Motion
15 for Change of Venue." Actually, the Court kind of
16 mistook a motion that we had to return the venue to
17 Montgomery County for a motion for change of venue.
18 "I thought we just heard that." "Well, that wasn't
19 what," "that wasn't what I," "that wasn't what I
20 just argued. I just argued a Motion to Change Venue"
21 etc., etc. I just argued a Motion to Return Venue to
22 Montgomery County. "But my argument would be similar
23 as it relates to a Motion for a Change of Venue."

24 "All right, my ruling would be the same. That
25 Motion is overruled."

26 And let me see. The Court states up here --
27 okay. Okay, so at that point in time what the Court
28 told us is that, "However, if that is presented to
29 the Court or if during voir dire it becomes apparent

1 from the questioning of the venire at that time that
2 the Defendant cannot get a fair trial," the Motion
3 will be sustained by the Court.

4 And in March the Court did make comments
5 indicating that we could file it at a later date
6 because what we had indicated at that time we were
7 trying to do a Motion for Extension of Time to file
8 motions, and what the Court went on to say is that
9 the Motion for Change of Venue does not, should not
10 be impacted on by the deadline, by the motion filing
11 deadline.

12 BY MR. HORAN: Your Honor, just one-- my main
13 point is that we pulled a venire, I believe, July
14 3rd. Mr. Freelon was here, I believe. He voiced no
15 objection to the pulling of the venire, and once he
16 did that, something has to occur after that date that
17 would warrant a change of venue. That just hasn't
18 happened.

19 BY MR. FREELON: If I'm not mistaken, even at
20 that venire which we do not have that on the record.
21 I did and that was expressed at the point in time
22 about the change of venue. The Judge at that point
23 in time stated that the change of venue motion would
24 still be available, even at the pulling of the
25 venire. That's the only thing I did object to at
26 that point in time was that our motion for change of
27 venue--

28 BY MR. HORAN: --Your Honor--

29 BY THE COURT: --That is not what happened.

1 You did reserve your rights to move for a change of
2 venue at voir dire. You did not reserve any right to
3 file a motion at that time, and that is on the
4 record, and the record will speak for itself. The
5 statute is real clear on change of venue motions. In
6 order for them to be sufficient, they have to have
7 two affidavits with them. No affidavits were filed
8 with any motion for change of venue in this case
9 until about three weeks ago or right prior to the
10 last hearing in this case which was about ten days
11 ago.

12 That Motion for Change of Venue was called up
13 before the Court that day by the Defendant. A
14 hearing was heard. The Court ruled. Part of the
15 ruling was that there were no affidavits filed at
16 that time, and they were not. Those affidavits were
17 filed after that Motion, so at the time the Court
18 heard that Motion the Motion was legally
19 insufficient. Since there were no, since there was
20 no statutory correct motion filed prior to the
21 pulling of the venire, it was too late to file the
22 Motion after that.

23 I'm going to, of course, admit these exhibits
24 that you want. I want them admitted into evidence
25 and put into evidence. We have the jury here, and we
26 will find out whether or not it has influenced the
27 jury here in a minute. And when we do the, at voir
28 dire if it comes about that they have been prejudiced
29 or tainted by the publicity, then you can renew your

1 Motion then, and we will go from there. But the
2 Motion is overruled.

3 BY MR. LUMUMBA: Judge, let me also bring to the
4 Court's attention that I have filed a Motion to Quash
5 the Jury Venire based upon the fact that the
6 population, well, there is racial discrimination in
7 selection of the venire. The case law states--

8 BY THE COURT: --I have already ruled on that
9 Motion. I'm not going to revisit that.

10 BY MR. LUMUMBA: Well, I am asking it be
11 reconsidered because--

12 BY THE COURT: --Well, I'm not going to
13 reconsider it this morning.

14 BY MR. LUMUMBA: Okay, well, let me just point
15 out that the case law clearly states that we, you
16 know, we present a prima facie case when you
17 demonstrate at least by ten percent there is a
18 variation between the number of persons of the quote,
19 unquote "distinguishable group" or minority group and
20 the number of people in the jury pool. So what we
21 have shown is that 9 percent, I think it was 9
22 percent only--

23 BY MR. EVANS: --That is not true.

24 BY THE COURT: Well, Simon v. State answers that
25 question, and it answers it against you, Mr. Lumumba,
26 and that's a 1997 case.

27 BY MR. LUMUMBA: Well, I don't think it does
28 answer against me but anyway. What is not true? Is
29 it not true that it was only 9 percent of--

1 BY MR. EVANS: It was a lot greater than that at
2 the time we heard that motion.

3 BY MR. LUMUMBA: --No--

4 BY THE COURT: --I have already done that--

5 BY MR. EVANS: Your Honor, before we go into
6 voir dire, we have some motions. I know you are
7 probably going to qualify the jury first. But before
8 we actually start voir dire, we have a couple motions
9 we would like to raise.

10 BY THE COURT: Okay, I want to get the jury
11 qualified, and it will take us time to get a list
12 made. While they are getting the list, we will come
13 back here and--

14 BY MR. LUMUMBA: --Okay, well, let me just point
15 out that we have motions too. There are three
16 unsettled motions at least that we filed that were
17 never heard about suppression of evidence and things
18 of that nature, and we have some other motions in
19 limine to exclude certain testimony.

20 BY THE COURT: Okay.

21 BY MR. LUMUMBA: Just for the record, by the
22 way, we absolutely deny we have done anything to try
23 to influence the jury. The last I heard groups still
24 had freedom of speech. We did not call a press
25 conference and did nothing to have one called, and
26 Mr. Muhammad does not work for my office, is not
27 associated with my law office. If you ask the right
28 questions, you will get the right answers, but I
29 think that was the question that he was asked was he

1 affiliated with my law office, and no, he was not
2 affiliated with my law office at this time and he
3 wasn't affiliated with my law office at the time that
4 the question was asked to him.

5 BY MR. EVANS: Your Honor, I think the proof is
6 already out there from his own arguments before that
7 Muhammad does work with his office on cases. We can
8 prove even to a greater extent if necessary. We
9 would ask the Court even though there is still a gag
10 order in effect in this case, we would ask the Court
11 again to order that there is a gag order in this case
12 and order that that not only applies to the
13 attorneys, but anyone that is associated with them in
14 any way which means people that go out with them and
15 help them take statements or whatever.

16 BY THE COURT: Well, I don't think the law lets
17 me go that far.

18 BY MR. LUMUMBA: I don't--

19 BY MR. EVANS: --Your Honor, if it's folks that
20 they have control over which they do--

21 BY THE COURT: --You will have to show me some
22 law on that. I couldn't find any to that effect. I
23 am, the rules require a gag order on participants in
24 this trial, and there is one until at least we get
25 the jury selected.

26 BY MR. HORAN: Your Honor, does that include
27 people that are listed as witnesses?

28 BY THE COURT: Whatever the rule says in that
29 regard.

1 BY MR. LUMUMBA: So we would have these marked
2 as exhibits.

3 (WHEREUPON, THE FOUR NEWSPAPER ARTICLES
4 PREVIOUSLY REFERRED TO WERE MARKED IN EVIDENCE
5 COLLECTIVELY TO THE MOTION FOR CHANGE OF VENUE OF
6 9/14/98 AS DEFENDANT'S EXHIBIT D-G. THE VIDEOTAPE
7 FROM THE TV STATION WAS MARKED IN EVIDENCE TO THE
8 SAME MOTION AS DEFENDANT'S EXHIBIT D-H.)

9 (THE COURT THEN WENT INTO OPEN COURT IN LEE
10 COUNTY, MISSISSIPPI, AND WITH ALL COUNSEL, THE
11 DEFENDANT, AND THE JURY PANEL PRESENT DULY QUALIFIED
12 THE JURY PANEL. FOLLOWING QUALIFICATION, THE COURT,
13 ALL COUNSEL WITH THE EXCEPTION OF MR. EVANS, AND THE
14 DEFENDANT WENT TO CHAMBERS FOR FURTHER MOTIONS AS
15 FOLLOWS:)

16 BY THE COURT: Y'all filed a motion way back for
17 individual sequestered voir dire. I think we do need
18 some individual voir dire, certainly in relation to
19 the publicity. I'm not so sure about the rest of it,
20 but the publicity I think we do. I have spent the
21 last couple of days reading the Hand case and the
22 Gannett case, and for me to be able to do it
23 sequestered, I have to have a Hand hearing, and the
24 press has to be involved in all that. And then I
25 have to make certain findings after that before I can
26 sequester it. My idea is now to do individual voir
27 dire, but if the press so desires, let them sit in on
28 it.

29 BY MR. LUMUMBA: Oh, the press wants to sit in

1 on the trial?

2 **BY THE COURT:** Well, I don't know that they do
3 but under the Hand case, they are entitled to if they
4 want to and if, rather than go through the Hand
5 hearing which will mean Mr. Van Slike will have to
6 come up here and get in the case and all like that,
7 my intention is just to let the press-- have
8 individual voir dire, but let the press have access
9 to it.

10 **BY MR. HORAN:** Procedurally, Judge, how are you
11 going to do it? Are you going to do most of your
12 voir dire questions and save that for the end, or are
13 we going to do individual from the get go?

14 **BY THE COURT:** No, we are not going to do
15 individual from the get go. I'm going to do the
16 general questioning of the voir dire, and then those
17 who say they know anything about this case, then we
18 are going to take their names, and I will do the
19 individual there.

20 **BY MR. HORAN:** You mean get that out of the way
21 and then continue voir dire?

22 **BY THE COURT:** Right. That's what I intend to
23 do.

24 **BY MR. HORAN:** Y'all have any objection?

25 **BY MR. LUMUMBA:** So what you are telling, so the
26 press access that we are speaking of is the press
27 access to the individual voir dire?

28 **BY THE COURT:** Uh-hum.

29 **BY MR. LUMUMBA:** Oh. I don't have a big problem

1 with that.

2 **BY THE COURT:** Okay, all right. Well, I think
3 the easiest way to do it is let them come in and not
4 have to go through all that other, and I don't see
5 where that would hurt us. Okay. Now y'all got some
6 other stuff for me right now?

7 **BY MR. LUMUMBA:** Yes. Mr. Freelon wanted to
8 cite a couple of other cases.

9 **BY MR. FREELON:** Just cases on venue just for
10 the record, Your Honor.

11 **BY THE COURT:** Okay.

12 **BY MR. FREELON:** One case that deals with the
13 change of venue from 1997, Hickson v. State, and we
14 wanted to put the law in on the record. In that case
15 is almost, the facts are a little different from this
16 case, but in that case the Supreme Court granted,
17 reversed the lower court on the change of venue
18 issue. The law in that case, what the Court said
19 was, "Where the resolution of a case comes down to
20 factual disputes," - which we do in this matter; the
21 facts in this case are definitely going to be in
22 dispute- "the jury's role becomes paramount as it
23 weighs the credibility of the witnesses and
24 determines which factual accounts to accept or
25 reject." Because "It is absolutely imperative that
26 the jury be unbiased, impartial, and not swayed by
27 the consideration of improper, inadmissible
28 information. We can not say, with any degree of
29 certainty, that this was the case here because the

1 fact of the matter is that the juror 'threw the
2 proverbial skunk into the jury room' during the
3 deliberations by asking about other" things.

4 Judge, what we want to say, just place on the
5 record is that we do know from the last trial there
6 was different things placed into the, placed into the
7 individuals' jury right here in the City of Tupelo
8 right here in Lee County from the newspaper when they
9 talk about the confessions. This Court states that,
10 of course, you have that discretion. However, that
11 discretion is not unfettered, and this is the latest
12 case that deals with, the latest, last venue case
13 that was actually overturned that dealt with venue
14 and from December of 1997.

15 And also, the Court stated that in that case,
16 "Although this Court recognized that the average
17 citizen forgets the details of media news reports,
18 this Court still acknowledged that the community had
19 been bombarded with not only 'news' reports of the
20 murder charge with which Fisher stood charged, but
21 also with reports of a separate murder charge." So
22 this case, Your Honor, we think definitely shows that
23 this community has definitely been bombarded with
24 news reports, not only news reports, but something
25 from the first murder trial saying that our client
26 was guilty in the first murder trial. So what we
27 want to do for the record is cite this case. Maybe
28 the Judge, maybe you have already read it or maybe
29 have time to go back and take another look at it.

1 Hickson v. State, Hickson versus State of
2 Mississippi, cite as 707 So.2d 536.

3 Another case we just wanted to cite is a case,
4 Johnson v. State of Mississippi. In that case there
5 was two separate trials. The first trial was held in
6 Neshoba County. Both trials arose out of the same
7 set of circumstances, same set of events with each
8 other - one with a murder charge and the other one
9 was the kidnapping charge. But it was two separate
10 trials. One trial was held in Scott County. The
11 next trial, the venue was changed to Neshoba County
12 partly based upon the fact, of course, there was
13 already a prior trial and prior publicity surrounding
14 the first trial.

15 We wanted to cite those cases for the record
16 where the Court would have notice of those two cases
17 for the record. And the cite on that is 525 So.2d
18 809.

19 **BY THE COURT:** Okay, of course, the Court is
20 going to rule as it previously did. If we see what
21 happens in voir dire, and then we will revisit that,
22 and you can make your motion at that time.

23 BY MR. LUMUMBA: Judge, just and other stuff,
24 the cases that I would cite in support of my
25 contention that the statistical disparity and the
26 ratio between the number of Africans or blacks on the
27 jury and the number in the actual population is my
28 case is Turner v. Fouche, F O U C H E, and that is
29 396 U.S. 346. And the other one is Duren v.

1 Missouri, and that is cited at 3-- I mean 439 U.S.
2 357. And the final one was, I think Castaneda v.
3 Parrtida, was P A R R T I D A, and that is cited at
4 430 U.S. 483-- 482, I'm sorry.

5 BY THE COURT REPORTER: Can you spell the first
6 part of that?

7 BY MR. LUMUMBA: Castaneda is C A S T A N E D A.
8 So those are-- and I would also point out that Mr.
9 Brian Neely was here and is prepared to testify on
10 the issue if necessary. He is the one that submitted
11 the affidavit before on the systematic under
12 representation of black people on the venires here in
13 this county. So do you want me to put him on, or do
14 you want--

15 BY THE COURT: I have already ruled on that
16 Motion. I'm not going to revisit it.

17 BY MR. LUMUMBA: Okay. That's okay.

18 BY THE COURT: Okay, now anything else?

19 BY MR. EVANS: Yes, sir. The State has a Motion
20 in Limine that would apply to both voir dire and
21 opening statements. Before I go into the Motion, I
22 would like to explain why I'm raising it. Both from
23 the news release and also from the pamphlets that
24 have been scattered around the community, there is
25 information that may or may not be relevant to the
26 trial. Both the news release and the pamphlets
27 brought up information of what Veal and Hawkins may
28 or may not testify to. At this point it's my
29 information that Veal is put up in Chicago by the

1 Defense. I don't know if he will be back or not. It
2 is undecided at this point whether we will put
3 Maurice Hawkins on the stand. Therefore, any
4 rebuttal could not be brought out; any
5 cross-examination could not be brought out unless--
6 or impeachment, unless they testified. So we would
7 move in limine that the Defense not be allowed in
8 voir dire or opening statements to make any comments
9 about what their impeachment would be because there
10 is no way of knowing at this point whether the people
11 will even testify. So it would be improper to bring
12 up impeachment unless and until they did, in fact,
13 testify.

14 BY MR. LUMUMBA: Judge, my rejoinder to that is
15 this. First of all, Veal is not in Chicago. To the
16 best of my knowledge, he is right where-- we noticed
17 him on our witness list, and he is in Atlanta, and
18 they got a notice of the witness list, so they know
19 he is in Atlanta or should know he is in Atlanta.
20 But the second thing is about Veal we are not putting
21 him up anywhere. I don't know where that information
22 comes from. From what I understand, he is doing
23 quite well working two jobs over there. That's what
24 I have been told.

25 BY MR. EVANS: It comes from the tape recording
26 that you furnished us where it says that you are
27 sending him to Chicago to his mother's house.

28 BY MR. LUMUMBA: I never said--

29 BY THE COURT: --That is okay. I don't care

1 where he is. That is immaterial to what we are
2 talking about. The question is what we do with voir
3 dire.

4 BY MR. LUMUMBA: Okay, but this is the situation
5 here, Judge. Two things: A) they still have Veal on
6 the witness list. We have Veal on the witness list.
7 They have Mr. Hawkins on the witness list. We are at
8 liberty as long as they have them there, to state
9 what we anticipate that the testimony will show. Now
10 wise counsel--

11 BY THE COURT: --In your opening statement you
12 do now.

13 BY MR. LUMUMBA: Yeah, that's what I'm talking
14 about. That's what I'm saying.

15 BY THE COURT: In your opening statement, not in
16 voir dire.

17 BY MR. LUMUMBA: Well, I am concerned about, you
18 know, I am concerned about the opening statement, I
19 think we definitely have a right. As far as voir
20 dire is concerned, I think we have a right to voir
21 dire on the issue of whether they will take things in
22 consideration like prior inconsistent statements, the
23 possibility of favors, and stuff like that.

24 BY THE COURT: I think you can do that, but you
25 cannot get specific about what he is going to testify
26 to or whether he is going to contradict and all like
27 that. You can't go into that at all.

28 BY MR. LUMUMBA: As to those two gentlemen, no.

29 BY THE COURT: Right. They are going to have to

1 be general questions, and you can do that. I will
2 not allow any specific things about, directed to the
3 jury panel as to what the testimony is and that kind
4 of stuff. And then on opening statements you are
5 entitled, both of you are entitled to say what you
6 expect to prove.

7 BY MR. EVANS: Your Honor, if we do that, then
8 we are going to have to bring out on opening
9 statement that if they are going to go into what they
10 expect the proof will be, we will have to too as far
11 as the fact that both of them have testified before
12 or given statements before that he did admit that he
13 did the killings.

14 BY THE COURT: I think--

15 BY MR. EVANS: --That's why I think it is
16 improper unless we can bring that out, which we
17 can't, for them to go into rebuttal or impeachment.
18 They can't impeach something that we are not entitled
19 to bring out to the jury.

20 BY MR. LUMUMBA: No.

21 BY THE COURT: Both of y'all are entitled on
22 opening statement -- the reason I hate opening
23 statements -- both of you are entitled on opening
24 statements to present what you think you are going to
25 prove. You absolutely can do that, and I don't know
26 how I limit that. So I will let either one of you do
27 that.

28 BY MR. LUMUMBA: If we are informed, and I agree
29 with the Court's ruling. I would just state for the

1 record that, of course, we don't want, we don't think
2 it's in our interest to get off into a lot of things
3 which are not going to come up in the trial. So if,
4 I mean, you know, the way I look at opening
5 statements you try to state to the jury honestly what
6 you think will come up. If there is something that
7 they can tell us about these people, then we would be
8 willing to listen to it.

9 **BY THE COURT:** Well--

10 BY MR. LUMUMBA: --But I just--

11 **BY THE COURT:** --Yeah, I understand. I'm not
12 going to get off into that. Y'all are going to have
13 to prove your case by witnesses anyhow. That's the
14 way it goes. That's generally the way the juries do
15 it.

16 BY MR. LUMUMBA: Okay. Judge, we had a Motion
17 in Limine to preclude the testimony of Ms. Roxanne
18 Ballard unless she is subjected to, perhaps subjected
19 is the wrong word, but put in a hearing, a hearing
20 prior to her testimony so we can ascertain what her
21 actual familiarity is with the business at the time
22 of the incident. In reading her transcript from the
23 last trial, I don't think if you recall, but she is
24 the daughter of the deceased.

25 **BY THE COURT:** Uh-hum.

26 BY MR. LUMUMBA: One of the deceased, Ms.
27 Tardy. And her testimony essentially was all as to
28 what happens in the normal business, and she actually
29 tried to make a determination on how much money was

1 there. First of all, we have several problems with
2 that. Number one is, the question is when is the
3 last time she was even there? Is she qualified to
4 authenticate a document as a business record when she
5 is not even working there? I think you have got to
6 be working in a place before you can even
7 authenticate a document. We are going to challenge
8 the document itself if it's not authenticated by a
9 person who works there as a business record at that
10 time. And then she certainly can't testify from-- so
11 the document itself is hearsay unless it is
12 authenticated as a business record. Secondly, she
13 may not be in a position to make that kind of
14 testimony. So we are going to make a Motion in
15 Limine to preclude her testimony because there has
16 been no showing that she is in a position as of July
17 the 16th, 1996, to represent what was the case in
18 terms of record keeping at the job.

19 BY MR. HORAN: Your Honor, she has to just
20 testify as to her familiarity with the--

21 **BY THE COURT:** --Well, we are going to cross
22 that bridge when we get to it. Y'all make, you make
23 your objection if she testifies, and then we will
24 have a hearing. I will have a hearing back here and
25 hear those objections.

26 BY MR. LUMUMBA: Okay. There is a number of
27 other in limine objections, but maybe we should
28 handle them the same way you suggest about testimony
29 that came in. It seems at the last trial there was a

1 great deal of hearsay testimony that came in under
2 the, under the province of opinion evidence. As I
3 understand it, Judge, and I am just kind of alerting
4 you to this because I mean, you know, I'm not saying
5 that even prior counsel raised objections all the
6 time. But we had the situation where investigators
7 come in and testified; they give an opinion as an
8 investigator about how much money would have been
9 missing from the, from the business. You know, I
10 think that is inappropriate. An investigating
11 question here was Mr. Matthews, I believe it was, who
12 came in and testified that based upon his
13 conversation with Ms. Ballard, Ms. Roxanne Ballard,
14 that he was able to determine that about \$275.00
15 would have been missing from the business. I mean
16 that is hearsay on hearsay on hearsay based upon
17 expertise which does not exist. He has no expertise
18 which will allow him to make those kinds of
19 conclusions. He can certainly elicit the facts that
20 he wants. So we are going to make objections to that
21 kind of testimony, and we will make it at the time if
22 that is what the Court wants.

23 The final, the other thing I would raise at this
24 time to the Court is we had three different motions.
25 For one of them, we need someone-- we had a Motion to
26 Exclude Eye Witness Identification both at the time
27 of the line-up and the in Court identification as a
28 product of the line-up. What we don't have, and I
29 looked for, we just have xeroxed copies of the actual

1 line-up sheets that were used. The actual pictures
2 are very important, and so I would like to have
3 those, see those if I could. I think, I don't know
4 if they are in the Supreme Court or where.

5 BY MR. HORAN: I got them back.

6 BY MR. LUMUMBA: Okay, but we need to see those.
7 But I would like to have a brief hearing on those if
8 we can which would be the officers who showed the
9 people these pictures and the people who saw the
10 pictures, just to challenge that. And secondly, we
11 had evidentiary objections to the Defendant's
12 statement and to all the fruit of that statement
13 which would include the evidence which was seized
14 from the house. And those objections are based upon
15 the fact that we believe that the Defendant was
16 placed under arrest and held in detention, if not
17 officially placed under arrest, at a time that there
18 was not probable cause to put him in detention and
19 that he was, and the statement was taken from him at
20 that time. Brown v. Illinois indicates that even
21 mirandarizing a person who is unlawfully under arrest
22 does not save the fruit of that arrest from being
23 excluded as fruit of the poison tree. Brown v.
24 Illinois, and that is in the Motion that we filed.
25 We cited the case in the Motion, but it's a very,
26 very clear case that mirandarizing a person who is
27 under unlawful arrest does not save his statements.

28 BY THE COURT: I don't remember him making any
29 incriminating statements at the other trial. I could

1 be wrong about that.

2 BY MR. LUMUMBA: Well, they argued that it was
3 incriminating because they said it was, you know,
4 there was discrepancies between his statements--
5 first of all, there is obviously a discrepancy
6 between two of his statements. The second thing is
7 they argue that there was discrepancies between his
8 statements and other witnesses' testimony.

9 BY MR. HORAN: It still doesn't make it--

10 BY THE COURT: --Well, that's okay. Why don't
11 y'all raise that at that time too, and we will have
12 that hearing. I think that is the best way, and
13 where we are now is for y'all to make your
14 objections, and we will come back and hear it.

15 BY MR. HORAN: What time did you tell the jury?

16 BY THE COURT: I told them about 10:15. I don't
17 know whether we will make that by then or not.

18 BY MR. LUMUMBA: So my understanding is what we
19 are going to do now, you are going to kind of like
20 voir dire them on who has heard about the case, and
21 then the people who have heard about it, you are
22 going to bring them back here, you know.

23 BY THE COURT: Uh-hum.

24 BY MR. LUMUMBA: Do individual voir dire. Are
25 they going to come back here, or are they going to be
26 in the courtroom?

27 BY THE COURT: I think because we have so many,
28 the easiest way to do it is to do it back here.

29 BY MR. LUMUMBA: Okay.

1 BY MR. EVANS: Your Honor, and I really don't
2 know; this is unusual situation, so I really don't
3 even know how to raise this issue. But I would move
4 and I will do it as a Motion in Limine that the
5 Defense not be allowed to ask any questions that
6 would by their nature attempt to preclude any jurors
7 from serving. I'm not trying to limit them on voir
8 dire, but I would just ask that nothing be allowed to
9 be asked that would taint this jury.

10 BY THE COURT: Well, I hope neither side will do
11 that, I hope. I am counting on y'all not to. You
12 know Ms. Craft, and I have met her, but I can't
13 remember. Have you seen her out there?

14 BY MR. FREELON: Which Ms. Craft?

15 BY THE COURT: With the Clarion Ledger.

16 BY MR. FREELON: I know her, but I haven't seen
17 her.

18 BY MR. HORAN: I know her. I haven't seen her
19 out there either.

20 BY THE COURT: Okay. I haven't either. Maybe
21 the press don't want to be here.

22 BY MR. HORAN: Do you have to inform them, Your
23 Honor? Do you have to tell them that you--

24 BY THE COURT: --I don't know. You want to read
25 the case and tell me?

26 BY MR. HORAN: I don't know.

27 BY THE COURT: I don't know either. They didn't
28 tell me all that.

29 BY MR. FREELON: Judge, Judge, how--

1 **BY THE COURT:** --Yes, ma'am.

2 BY THE CLERK, MS. LOFTIN: Excuse me just a
3 second. I thought you might want to know this. I
4 have two jurors that have showed up late. I have a
5 Sandra Bishop and a Mr. Allen Chavers. Mr. Chavers
6 just got back from Birmingham. He is an officer with
7 the Tupelo PD.

8 **BY THE COURT:** Okay, I will qualify them in just
9 a minute. I guess of necessity, for right now just
10 go ahead and put them at the bottom of the list. If
11 they don't qualify, I will scratch them off the
12 bottom.

13 BY MR. FREELON: I guess before we-- one thing I
14 am concerned about. I notice you made a statement
15 that, which may be correct in a way that everybody -
16 You all don't know anything about this case.

17 **BY THE COURT:** Well, we are going to find out
18 whether they do.

19 BY MR. FREELON: Right. And I guess we are
20 concerned about how you will raise that issue in
21 finding out because--

22 **BY THE COURT:** I'm going to ask them.

23 BY MR. FREELON: And which--

24 **BY THE COURT:** --when they are back here by
25 themselves. I mean, well, they won't be by
26 themselves. I am going to invite y'all to come too.

27 BY MR. FREELON: But you are going to ask
28 everybody at first have they heard something about
29 it?

1 **BY THE COURT:** Right. And then I'm going to
2 tell them I don't want to know what it is. I just
3 want to know who has heard anything about it.

4 **BY MR. LUMUMBA:** Okay. Now if they have heard
5 anything about the case, then will we be allowed to
6 ask them questions?

7 **BY THE COURT:** Sure. Sure. I get to go first,
8 but then y'all get to ask.

9 **BY MR. LUMUMBA:** Okay.

10 **BY THE COURT:** All right, gentlemen. Let's take
11 a little break. Let me see if I can run -- have
12 y'all got any problem with me if I can find anybody
13 from the press just with me talking--

14 **BY MR. FREELON:** --No, we have no problem. Also
15 Judge, I am sorry. This is-- hold on. We had spoke
16 briefly about trying to receive some medical records.

17 **BY THE COURT:** Yeah, okay.

18 **BY MR. FREELON:** From Mr. Hawkins and that is
19 the order allowing us to receive the medical
20 records.

21 (Hands order to the Court.)

22 **BY THE COURT:** Whitfield is in Rankin County,
23 isn't it?

24 **BY MR. FREELON:** It's in Rankin County.

25 (The Court signed the order.)

26 (FOLLOWING A BRIEF RECESS, THE COURT RECONVENED
27 IN OPEN COURT WITH ALL COUNSEL, THE DEFENDANT, AND
28 THE JURY PANEL PRESENT. AFTER QUALIFYING TWO MORE
29 JURORS, THE COURT CONDUCTED VOIR DIRE EXAMINATION IN

1 OPEN COURT FOLLOWED BY EXTENSIVE INDIVIDUAL VOIR DIRE
2 IN CHAMBERS WHERE ALL COUNSEL, THE DEFENDANT, AND THE
3 PRESS WERE ALSO PRESENT. INDIVIDUAL VOIR DIRE IN
4 CHAMBERS CONTINUED THROUGHOUT THE REST OF SEPTEMBER
5 14, 1998, AND THROUGHOUT THE MORNING OF SEPTEMBER 15,
6 1998, BUT WAS NOT TRANSCRIBED SINCE THIS LEE COUNTY
7 JURY WAS NOT THE JURY THAT ULTIMATELY HEARD THIS
8 CASE. FOLLOWING THE CONCLUSION OF INDIVIDUAL VOIR
9 DIRE AND THE NOON RECESS ON SEPTEMBER 15, 1998, THERE
10 WAS THE FOLLOWING MOTION IN CHAMBERS OUTSIDE THE
11 PRESENCE OF ANY JURORS BUT WITH ALL COUNSEL AND THE
12 DEFENDANT PRESENT:)

13 BY THE COURT: Y'all mind if I don't robe up for
14 this?

15 BY MR. LUMUMBA: No.

16 BY THE COURT: I assume a lot sometimes; maybe I
17 shouldn't assume, but I assume you have got something
18 you want to--

19 BY MR. LUMUMBA: Yes, I want to renew my Motion
20 for Change of Venue, Judge.

21 BY THE COURT: Okay.

22 BY MR. LUMUMBA: Judge, we have, and I see this
23 as a continuing motion, and all the things that I
24 have submitted to this point, I would ask the Court
25 to consider. I would like to urge upon the Court its
26 consideration of the fact that in this case
27 understandably we did present newspaper articles from
28 the Clarion Ledger because some people do read the
29 Clarion Ledger in this community. However, the

1 Clarion Ledger is probably the minority of the
2 publicity which has been covering this case as far as
3 this community is concerned. Really, the other
4 publicity is more focused at least on the other upper
5 part of Mississippi, if not, you know, just this area
6 completely.

7 And what I mean by that is this. The Daily
8 Journal immediately impacts this area, and that has
9 been a large portion of the publicity. The Daily
10 Journal covered it when the incident happened. It
11 was covered, if I recall correctly, in those
12 articles, and I don't have them in front of me, along
13 with some killings that also occurred, I believe in
14 Neshoba County at that time. They were on the same
15 day. That same day that we were talking about three
16 people were killed in Neshoba, and they also talked
17 about the Winona killings.

18 Immediately-- the next, there was other coverage
19 in the Daily Journal including about the funeral
20 which occurred in the, about families mourning the
21 loss and things of that nature. That, I believe, was
22 covered in the Daily Journal about the reward. There
23 was coverage in the Daily Journal for sure on the
24 front page about the arrest of the Defendant. Like
25 in a sense, the Daily Journal and many newspapers
26 have more than one front page. You have a page
27 front, and then in many instances you have a local
28 section or something like that, which in some
29 respects a lot of newspaper people refer to as a

1 second front page.

2 There were, there was coverage in the Daily
3 Journal as it related, heavy coverage -- there was
4 coverage, I believe, in the Daily Journal about the
5 change of venue, the fact that the case was coming to
6 Tupelo. There was coverage in the Daily Journal
7 about the fact that the trial occurred. The trial
8 was a big event in the coverage. The paper covered
9 it often on the front page during the trial including
10 the verdict. Man found guilty sentenced to death,
11 Flowers sentenced to death. That was the front page
12 coverage in the Daily Journal which is a local
13 newspaper here.

14 The Memphis Commercial Appeal covered it. Now
15 the Commercial Appeal does not affect the whole State
16 of Mississippi in any serious way, but it certainly
17 impacts upon this area. Just about everything I said
18 was covered in the Daily Journal was also covered in
19 the Commercial Appeal, so it would have also
20 influenced the Tupelo area. We had a situation where
21 we have had two tapes now, one which I know the Court
22 has had a chance to review. The one from WCBI,
23 which was not here which I find even more impressive
24 in terms of the amount of coverage than the one that
25 came from the other radio station-- TV station. I
26 was given to believe that the first TV that we
27 submitted coverage on, on videotape was WTVA, and I
28 believe that is actually located here in Tupelo
29 whereas WCBI is from Columbus. But it definitely

1 covers the Tupelo area.

2 They all covered the incident when it occurred.
3 There is coverage on events subsequent to the
4 incident like the families trying to get it together,
5 the shock on the Tupelo-- on the Winona community,
6 and things of that nature. And then they covered the
7 trial. Everybody covered lots of testimony in the
8 trial. This is very important. Front page coverage
9 often talked about blow by blow, the Tupelo Daily
10 Journal as well as some of the TV, the blow by blow
11 on the testimony at the trial.

12 Things that I can remember without looking at
13 the evidence which is that they covered, they covered
14 the fact that our client-- they actually covered this
15 when he was arrested; that he was a worker at Winona,
16 that he was a disgruntled worker. And as the media
17 put it when we were sitting there watching it in the
18 courthouse, in the courtroom where we played the
19 first video which is also the way that they covered
20 it in the newspaper, is that man from, man who former
21 employee is responsible for murders. That was the
22 statement they made - responsible for the murders.
23 And then they went on to explain how he was a
24 disgruntled employee and how he had problems because
25 of being fired or whatever.

26 And then later on we get all this testimony that
27 comes up at the trial. Veal's testimony was
28 covered. Hawkins' testimony was covered. All of
29 these are so-called confessions. In fact, that's the

1 headlines - Inmates say; Inmates say Flowers
2 confessed or Defendant confessed to the crimes. In
3 the paper we have coverage on Porky Collins'
4 testimony. Witnesses say they see Defendant at the
5 scene of the crime. Porky Collins or Charles
6 Collins' testimony about seeing two black people, one
7 of them was supposed to have looked like Mr. Flowers
8 was in the paper. Young lady by the name of Clemmie
9 Fleming, her testimony about him allegedly running
10 from the area is in the paper.

11 Testimony concerning, of course, the four dead
12 bodies is in all the coverage. All of that always is
13 covered. That is always covered and many, many other
14 items of testimony critical to the case. The fact
15 that he is supposed to have been at Angelica at some
16 point and a gun was stolen from the car; that is
17 covered. Scientific tests is covered in the paper.
18 The bloody footprint is covered in the paper. The
19 alleged gunshot residue is covered in the paper. All
20 of these things are covered in the paper, and most of
21 those things are reflected in some way or another in
22 the TV coverage.

23 I would also remind the Court that we were not
24 able to bring into the court radio coverage.
25 However, as we have sat here and listened to jurors
26 say how they know about the case, a generous amount
27 of jurors have suggested that they heard about the
28 case on radio. They heard about certain things on
29 radio. There was at least two or three jurors who

1 said that they knew about the case through radio. So
2 there is obviously radio publicity about the case.

3 The recent publicity - publicity is not only old
4 in this case, but it is also recent. Contrary to
5 what has been suggested to the Court, the vast number
6 of jurors who have commented on recent publicity have
7 commented on it because of an article which appeared,
8 I haven't even seen the article actually, but I
9 believe it appeared over the weekend here in the
10 Tupelo area. And what occurred in that article, they
11 do record the fact that jurors are being summonsed,
12 and at the same time they talk about the fact that
13 the Defendant is found guilty and sentenced to
14 death. Every time since the time of the conviction
15 that this case has been covered as far as I can
16 ascertain in all media and including two recent media
17 releases here in the Tupelo area or newspaper
18 releases in the Tupelo area, they talk about he has
19 been convicted and sentenced to death. They say
20 that. They say that he has been convicted and
21 sentenced to death.

22 We have now had 33 jurors excluded for cause
23 because of the fact that they have admitted that they
24 cannot be fair. They have admitted that they cannot
25 be fair. Another 30 jurors have admitted that they
26 know about the case, and many of those we have not
27 even crossed the bridge of whether they are going to
28 be excused for cause yet. But I would suggest to the
29 Court that many of them are so infected with

1 knowledge of the case that it would almost be
2 impossible to credibly keep them on this jury. We
3 have a community which is not only infected with
4 publicity in this case, but we have a jury which is
5 infected with something which is almost impossible to
6 cure.

7 Now we are not trying to cast fault here, but we
8 just do need to know the origins of the problem
9 here. In a kind of a novel way, the State has
10 decided that it would prosecute a man four different
11 times for cases that occurred on the same day. It is
12 novel to me. I don't know if it's novel to anybody
13 else, but it's novel to me. The problem that that
14 causes and it's at the State's option is that once
15 you try a person and he is convicted for one crime,
16 which happens exactly at the same time in the same
17 set of scenario under the same of circumstances, then
18 it becomes almost impossible to purge the jurors
19 where he was tried before of the knowledge of that
20 conviction and the sentence of guilt-- and the
21 sentence of death. So that is a burden that we bring
22 with us to this particular case and to this
23 particular jurisdiction.

24 What jurors have said is that they know of it.
25 Some of them have initially said that it would not
26 bias them. But then when we have gone more probing
27 and we ask absolutely logical questions about how
28 they can love the jury system, respect the jury
29 system, respect their community, and respect the

1 people who sit on the juries in their community and
2 at the same time not even have influence, be
3 influenced away from the presumption of innocence.
4 Many of them have come forth and said well, you know,
5 it probably would weigh on my thinking. Some of the
6 ones who have not said that have struggled, and the
7 struggle appears to be to me one which is not allowed
8 in a law system which talks about the presumption of
9 innocence.

10 The very fact that a person would have to
11 struggle as one of the young ladies, who I forget her
12 name, was in here most recently did, with well, maybe
13 should I say no? Should I say yes? And then I say,
14 well, maybe you can say I'm not sure. Well, I want
15 to say yes. I want to say yes. She wants to say
16 yes, but is this an accurate reflection of what is
17 going on in her head? Now I'm not a psychologist. I
18 don't think I need to be to be concerned about this
19 situation. I'm not a psychologist, but I do know
20 that the courts have taken cognizance of the fact
21 that you cannot always accept what a juror says at
22 face value when you are talking about cases like the
23 one that is presently before us.

24 Mr. Freelon has provided me with several cases
25 which address the issue of bias, pretrial publicity
26 and bias where the courts have reversed these cases.
27 And the cases actually that we are talking about are
28 cases where they have seen fit to reverse convictions
29 when a rape, in rape cases because of pretrial

1 publicity. And that was, one of them was Johnson v.
2 The State of Mississippi, and that case is cited at
3 525 So.2d 809, and it may have been one that Mr.
4 Freelon has provided you with. And I'm going to make
5 a couple of comments about these cases, and I'm going
6 to ask that since, you know, I think this is an
7 extremely critical issue, that if Mr. Freelon wants
8 to amend my comments after I am finished with this
9 presentation, that he do so.

10 But let me say this, is that one of the problems
11 that we have here, Judge, is that there is a rule
12 which says that a person's prior conviction can't
13 even come into trial against them. There is only one
14 case where it can come in, and that's the case where
15 it's for each impeachment when he gets on the stand.
16 And many cases have held if the conviction is too
17 closely related to the case at hand and its facts or
18 in any way would influence the jury to find this man
19 guilty because well, he did that one so he probably
20 did this one, then that's when you cannot allow the
21 conviction to come in to impeach him.

22 When you can allow the conviction to come in to
23 impeach him, if it's a felony; assume it's a felony
24 or something; if it's misdemeanor, it has to do with
25 - what do you call it? - integrity or honesty or
26 something like that. The Court has to do a balancing
27 act, and it can come in if it is more probative than
28 prejudicial on the issue only of credibility.

29 So the law well recognizes that for a juror to

1 in the department, subpoenas and things of that,
2 summons and things of that nature. It strains
3 credibility that many of these people would suggest
4 that they don't know about the guilty verdict, and to
5 the extent that that's true, that any representation
6 that they make may be true, it is not going to take
7 very much testimony, very much time, very much
8 sitting in the presence of other people who do know
9 about the guilty verdict to put them in a position
10 where this information is going to be straight up
11 refreshed in their memory, in their memory logs and
12 tell them that this is a man who has been convicted
13 and sentenced to death before. Even convicted would
14 be enough, but in this case we go a step beyond
15 that. In this death penalty case we have information
16 which shows that the jurors know not only that he has
17 been convicted, which they just are not supposed to
18 know, but secondly, that he has been sentenced to
19 death.

20 Now the only kind of analogous situation that we
21 generally find for this kind of situation is two.
22 One in which we have a case to talk to you about, and
23 that was a rape case where--

24 BY MR. FREELON: That's one of them.

25 BY MR. LUMUMBA: Okay, you have a rape case
26 where a rape occurred of the same woman by the same
27 person. 15 minutes.

28 BY THE COURT: Hickson?

29 BY MR. LUMUMBA: Hickson, that's it. That is

1 Johnson. That is the Johnson case. We are about to
2 go to the Hickson case. The Johnson case, a rape
3 occurs of the same woman by the same man 15 minutes
4 prior to the second rape. They mention in these
5 cases, by the way, that they are applying the, they
6 are applying, they are reversing the case although -
7 and I think that might actually be in Hickson where
8 they say this, but Harvey can correct me if I am
9 wrong - that although the standard is much more
10 sensitive, much more strict, it requires much more
11 scrutiny by the Court, much more sensitivity by the
12 Court, and actually the courts have been admonished
13 in murder cases. That's where in murder cases, in
14 the death penalty cases in particular, that it must
15 change venue. Admonished, that is the term that they
16 use in these cases, admonish; change venue if, in
17 fact, you have precipitous and a great deal of
18 pretrial publicity that has infected the jury.

19 And it is almost like they put the burden on the
20 prosecution at a certain point to prove, or the
21 burden is on the Court to tell them that they are
22 sure that this juror, that this has not affected
23 these jurors. They see it as that important, but
24 what happened in these cases here that I am about to
25 talk about, they use, they reverse the cases even
26 though it was not a murder case. It was a rape case,
27 but in one case you have a situation where a guy is
28 accused and convicted actually of raping a woman 15
29 minutes before the case in chief, the case at hand,

1 the case in question. So the same woman is raped 15
2 minutes later by the same person presumably, or at
3 least that's the charge. Then what happens is that
4 he is tried, and at that trial information comes up
5 that he was convicted of the rape that occurred 15
6 minutes earlier. They reversed the conviction. "In
7 this case, the very fact that the prior conviction
8 was admitted convicts him because he has already been
9 deemed guilty by another jury. Therefore, we reverse
10 and remand for a new trial consistent with this
11 opinion."

12 They go into some of the analysis which involves
13 the rule that I talk about as it talks about
14 impeachment.

15 **BY THE COURT:** Give me that cite on that case.

16 BY MR. LUMUMBA: Okay, this case is Johnson v.
17 State of Mississippi. That is okay, this is 525
18 So.2d 809, and I point out in this case that this is
19 a case where the jury was actually changed the venue
20 twice. In other words, the first conviction was in a
21 venue different than the conviction where the crime,
22 different than the venue where the crime occurred.
23 The second case was also in a venue different than
24 the venue where the crime occurred, but also
25 different than where the first conviction occurred.
26 In this case they also make this interesting
27 comment: "Mr. Johnson's"--"Under M.R.E. 609," which
28 is the rule I have been talking about, "Mr. Johnson's
29 prior conviction of rape should have been kept out of

1 evidence. The defendant's only defense was alibi.
2 It was already established in the record by testimony
3 of the victim" -- "It was already established in the
4 record by testimony of the victim, however
5 inadvertent, that the defendant had raped her on the
6 same night some 15 minutes earlier for which he was
7 convicted and sentenced to life without parole and
8 affirmed by this Court on August the 5th, 1987. If
9 alibi is his only defense, the prior conviction puts
10 his alibi testimony in direct conflict to the finding
11 of another jury. His testimony is thus futile and
12 his trial nothing more than idle ceremony." That is
13 strong language.

14 **BY THE COURT:** Okay, but now that case, that's
15 when it happened at trial. I mean that is not a
16 particular change of venue, is it? I mean it's not a
17 situation where they testified at voir dire--

18 **BY MR. LUMUMBA:** --No, no, no, no, no, no, no,
19 but--

20 **BY THE COURT:** I understand your analogy, but I
21 am getting the facts right.

22 **BY MR. LUMUMBA:** Yeah, this one is not, but the
23 one I am about to get into is.

24 **BY THE COURT:** I understand.

25 **BY MR. LUMUMBA:** Okay, and let me say that the
26 reason that we raise this is because jurors have
27 stated that they know about the prior conviction. So
28 we would say that this is one step worse than this
29 case. In other words, at least in this case they

1 wait until they got to trial before the information
2 came up. In our case we already know the jurors out
3 there know that he has been convicted, and we know
4 the great probability is that other jurors who may,
5 in fact, sit in this case will know that he has been
6 convicted before they walk out of that jury room and
7 make-- walk into the jury room to deliberate because
8 the community is infested with that knowledge. And
9 it's going to be almost impossible to stop it. And I
10 hate to use words like "infested" and stuff like that
11 because I'm not really trying to put the press down.
12 But I'm just trying to use words which I think, you
13 know, apply to the case. But now here is the
14 situation here too, Judge. So, so that is why I
15 think the analogy is appropriate.

16 Now in Hickson -- Hickson v. State is 707 So.2d
17 536.

18 **BY THE COURT:** Okay, I read that last night.

19 BY MR. LUMUMBA: Okay, so I won't dwell on that
20 but, uh.

21 **BY THE COURT:** And I'm not cutting you off, you
22 understand. I want you to know I am familiar with
23 it.

24 BY MR. LUMUMBA: Okay, well, that's good.
25 That's good, and I am glad you had that opportunity.
26 This case has many similarities to the present case.
27 There was front page news articles in the Hickson
28 case. The story recites the events surrounding the
29 identification of Hickson at the festival. This is

1 also a rape case. This is a case where they reversed
2 it even though it is a rape case even though the
3 heavier standard generally goes to the murder cases.
4 The state put on seven witnesses. This is similar to
5 this case in this respect. At the venue change
6 hearing, who all said that they could be-- they
7 confessed knowledge of the case, I think, but they
8 all said that they could be impartial and that the
9 community could be impartial. The defense put on six
10 witnesses who testified that the community couldn't
11 be impartial, you know, that they would actually be
12 biased.

13 In our case we reduced it down to two and two.
14 They put on two witnesses that said that they would
15 not, they didn't think the community would be
16 prejudiced even though they admitted they hadn't
17 talked to anybody else about it, and we put on two
18 witnesses, both who indicated they had talked to
19 other people and who felt that the community would be
20 prejudiced. The Hickson case, of course, is a case
21 where the state's conviction is reversed. I want to
22 just quote a couple of things out of here. They
23 pointed out in the Hickson case that it was not
24 necessarily... (Pause while Mr. Lumumba confers with
25 Mr. Freelon.)

26 **BY THE COURT:** While y'all are finding what you
27 are looking at, let me see Judge Ford a second.

28 (Off the record briefly.)

29 **BY MR. LUMUMBA:** In this case it's important to

1 point out that this is a case where it came out
2 that-- okay.

3 **BY THE COURT:** Well, you had something like
4 eighty something jurors, and 44 of them--

5 BY MR. LUMUMBA: --Yeah, half of them said they
6 knew about the case. And we had in this case, like I
7 said, I think over 60 have confessed some knowledge
8 of the case already. And I think that we only have
9 69 jurors still left. So of 60, 30 of those out
10 there have confessed knowledge, and we have already
11 excluded 30 others.

12 **BY THE COURT:** Let me see the Hickson case.

13 BY MR. LUMUMBA: Yeah, go ahead. We have
14 already excluded 30 others. Then that would suggest
15 to me, Judge, that over half of the jurors who have
16 been brought to this panel have confessed some
17 knowledge about the case. The Court also says in the
18 Hickson case, and I was looking for that statement,
19 but I will just paraphrase it, and since the Court
20 has read it, I am sure it is well aware of it. Is
21 that the Court does not take-- it says that, you
22 know, you have got to give us, you have got to give
23 us credit for having some common sense. We don't
24 assume that because jurors say the media publicity
25 will not affect them and that they will be left-- and
26 just about all the jurors in that particular case,
27 according to what the Court said, said that they
28 heard about the publicity, but they are non-biased;
29 they could be fair.

1 Now that is not really the case here. The ones
2 who heard about the case, a great number of them, if
3 not the majority of them; I believe the majority of
4 them have said they would be affected by it. Others
5 have admitted knowing the critical thing, about the
6 conviction and the sentence of guilt which really
7 challenges them to be fair. But in the Hickson case
8 they actually said that the jurors in that case said
9 that they could be non-biased. Hickson on page 542
10 says, recognizing that pre-trial media can bias, the
11 Court should be prepared to grant venue in cases
12 where a lot of publicity has occurred, and I am
13 paraphrasing that. The knowledge of the first
14 conviction also is from the-- well, that is actually
15 from the Johnson case. But also in the Hickson case
16 there was something that came up about defendant's
17 prior conviction. The defendant had been previously
18 convicted. I don't know if it was another rape case
19 or it was some other kind of case, but he had been
20 previously convicted. And the Court also found that
21 that was prejudicial, and for that reason that the
22 case should also be reversed.

23 Now in this case also, Judge, this is a key to
24 both the Johnson case and I think to the Hickson
25 case. Where we are dealing with a community or any
26 kind of scenario where the defendants, where we are
27 dealing with the juries, of the necessity of the jury
28 making factual determinations - that's what I am
29 searching for here. The jury in this particular case

1 has to make factual determinations as to whether or
2 not the Defendant in this case should be found
3 guilty. The Defendant's ability to combat those
4 factual allegations is already compromised by the
5 pretrial publicity itself. The man has been
6 convicted and sentenced to death. That means that
7 his alibi defense, somebody has disregarded it. It
8 certainly means that it was not sufficient enough to
9 stand up to the scrutiny of, in the last trial when
10 that conviction occurred, and that does a great deal
11 to compromise the ability of the jurors. And in
12 fact, in the Hickson case it goes on to say-- well,
13 not in the Hickson case, but in the Johnson case it
14 says, Knowledge of the first conviction prejudices
15 the case. This case violates the right not to know
16 about the conviction, and it goes on to say that,
17 that the defendant's alibi became a mere formality.

18 The Court also recognized the fallibility of
19 jurors and recognized-- and this is, we are back in
20 the Hickson case now, and recognized that the United
21 States Supreme Court had recognized the fallibility
22 of the jurors' oath.

23 Let me go on and say just a few things about
24 some of the things that this jury, jurors have told
25 us. The jurors have told us in this case--

26 **BY THE COURT:** You are talking about from the
27 questionnaires; is that right?

28 BY MR. LUMUMBA: Well, no, I am talking about
29 from their statements.

1 **BY THE COURT:** Statements today? Okay.

2 BY MR. LUMUMBA: Today, during the last couple
3 of days. Sandra Poland told us, Sandra Poland: "I
4 hope I can be fair, but it will be hard." Harold
5 Sandifer followed it on TV - "Don't believe guilt
6 could be overcome." Somebody told us, and I'm not
7 sure which one, it says, "I felt it was a done
8 deal." That juror at this point has been excluded,
9 but other people have testified in such a way as that
10 they felt it was a done deal too, however not using
11 that word.

12 Rufus Palmer says, "Lady in the jury pool is
13 talking about the victims." William-- and we found
14 out about there has been some community relationship
15 with the victims' families, that churches in this
16 area have been contacted, and that in contacting them
17 they are asking them to make contributions toward the
18 victims' family and their housing. One prospective
19 juror who had told this Court he could be fair, he
20 had told this Court he could be fair, and probably
21 believed it - I'm not suggesting that he was being
22 dishonest - had actually made a contribution to the
23 fund for the victims' family.

24 William Murphree: "Conviction has an
25 impression," and plus he didn't think that the
26 information about the communications with the
27 victims' family was important enough to even raise
28 it. Fortunately enough, one juror did come in here
29 and volunteered it to us because we wouldn't have

1 known about it other than that, and then after that,
2 we found out from several jurors that they had been,
3 you know, touched by that. And somebody still out in
4 the juror pool talking about, talking about the
5 victims' family and the support for the victims'
6 family at least according to Rufus Palmer.

7 J. W. Buse, it would be difficult to know, be
8 difficult to put it out of his mind, and that is
9 characteristic of what a lot of them said. Linda
10 Russell: "Somebody asked me for support to feed the
11 victims' family." Elizabeth Akers: "You can't just
12 dismiss that." Chris Maynard: Know about the family
13 needing a place to stay.

14 **BY THE COURT:** Let me say this. I want you to
15 put anything in the record you want to put in the
16 record, but I made those same notes, and I have got
17 them here in front of me.

18 BY MR. LUMUMBA: Okay. Well, I am--

19 **BY THE COURT:** --and I tried to pay attention
20 for the two days. So if you want to put it in the
21 record, you go right ahead. But I am confident I can
22 recall what they said.

23 BY MR. LUMUMBA: It says in the Hickson case,
24 "Where the resolution of a case comes down to
25 factual disputes, the jury's role becomes paramount
26 as it weighs the credibility of the witnesses and
27 determines which factual accounts to accept or
28 reject. Thus, it is absolutely imperative that the
29 jury be unbiased, impartial, and not swayed by the

1 consideration of improper, inadmissible information.
2 We cannot say, with any degree of certainty, that
3 this was the case here" and "because the fact of the
4 matter is that the juror 'threw the proverbial skunk
5 into the jury room' during the deliberations by
6 asking" the other jurors about "charges against
7 Hickson. If you throw a skunk into the jury box, you
8 can't instruct the jury not to smell it."

9 I think the skunk has also been thrown in this
10 case even before the jurors have gone into the box or
11 before they have gone into the jury room. Perhaps
12 one of the more telling questions about the people
13 who still remain on the panel is Sandra Bishop.
14 Sandra Bishop said that she didn't remember really
15 reading -- I can't say she said she didn't remember
16 reading nothing on the case, but she remembered very
17 little. And Sandra Bishop actually said, she
18 articulated that, "I have got this bias in my mind,"
19 and she was pretty much telling us that she didn't
20 know why it was there. But then as she began to talk
21 to the Court, because actually she probably wouldn't
22 even have been talking if she was like so many other
23 people probably sitting out there on the jury who
24 haven't at this point realized that they even know
25 anything about this case or haven't admitted that
26 realization, she began to remember, well, maybe I did
27 read it because she knew facts that she could only
28 know by reading or perhaps by person to person
29 conversation. And the Court's inquiry, of course,

1 inquired into not only news media, but also inquired
2 into person to person conversation.

3 So the bottom line is this. I have for since
4 1976, been in a number of different selections of
5 juries. I have done it in over 25 states, and I have
6 seen many juries, and I have seen many jury
7 selections. And I think that there are very few, if
8 any, which compare to this in terms of the amount of
9 professed prejudice prior to the time that the jury
10 has even been submitted to the rest of the voir
11 dire. To me, this case screams out for a change of
12 venue.

13 Every single thing that we have told the Court
14 in our Motion to Change Venue a couple of weeks ago
15 has been proven beyond a reasonable doubt today.
16 Everything we said about-- I remember Ishmael
17 Muhammad being challenged on the witness stand:
18 Well, you don't know. You don't know where these
19 people live. They live in Tupelo, or they live out
20 in the county somewhere, and you know, you don't even
21 come from here. And plus we think you are affiliated
22 with Mr. Lumumba anyway, so you are probably lying to
23 us, you know. Ishmael Muhammad said I went out there
24 with, went out there with-- and I'm not trying to be
25 facetious, but I went out there with questionnaires,
26 and I asked these people questions, and I wrote down
27 what they told me. And they told me they had an
28 opinion, and the opinion was that the man was
29 guilty. Ten out of the, I think fifteen, or actually

1 one more expressed an opinion but didn't say what it
2 was.

3 Now I think that this voir dire process has
4 borne that out. And I think that, you know, beyond
5 all of this and hovering over this whole
6 consideration here has got to be a sense of amazement
7 by anybody else who crosses the threshold of this
8 case and reads about it, that anybody would really
9 believe, and I think one of the jurors said; one of
10 the jurors said it, "Well, how could you not be
11 affected?" That's what she said. Several jurors
12 said it. How could you not be affected by the fact
13 that the man has been guilty-- convicted and
14 sentenced to death in the very same case on the very
15 same facts. You can struggle against it. You can
16 not want to be affected. You can feel it's your duty
17 to the community to sit on this jury, you know, in a
18 very cynical kind of thinking to make sure the man is
19 convicted. You can feel it's your duty to sit on
20 this jury because you know the Judge needs jurors and
21 because you are a citizen, and regardless of the
22 fact, you know, you are not necessarily going in
23 there to convict everybody, but you want to bend over
24 backwards to help the Judge and help the Court and to
25 make sure they have enough jurors. You can sit on
26 this jury because you are uncertain, but you want to
27 promise the Judge that you will do all right.

28 But how can any of those people trying to sit on
29 the jury enter this reasonably with that kind of

1 knowledge? Eminent, admitted and about to surface in
2 their minds if it hasn't surfaced already, to be a
3 fair and impartial jury. So we would move for a
4 change of venue. And we would ask this Court to
5 grant that Motion.

6 BY MR. EVANS: Your Honor, in response to start
7 with, as the Court will note, I think the jurors have
8 been asked very detailed questions about their
9 feelings, about their knowledge, and from my notes
10 every juror that has even remotely stated that it
11 might even possibly to the smallest extent taint
12 them, this Court has already excluded. That is the
13 test, not have you heard something. Opposing Counsel
14 would like to argue that if the news media gives
15 information that is not something that can come
16 across in the jury, then you can't ever try a case.
17 If that is so, folks like Timothy McVae and Byron D.
18 LaBeckwith would never go to trial because our news
19 media in this state covers criminal events. Whether
20 it be good or whether it be bad, they do cover them.
21 And they have the right to cover them, and people
22 have the right to read them. There is absolutely
23 nothing in our law that says if a person has read
24 these articles, that they cannot serve as jurors.
25 The only thing that is important is if they have read
26 these opinions or talked to people and they have
27 formed an opinion. Even possibly formed an opinion,
28 they cannot and should not sit as jurors.

29 The case law, I think, in this state is real

1 clear. Simon v. State is still prevalent law as far
2 as what we are here on today. In that case it is not
3 whether they have heard or read that would affect
4 their ability to perform as jurors. That fact does
5 not matter, and that in Simon is stating the U.S.
6 Case of Mumin, I guess that's how you pronounce it.
7 M U M I N versus Virginia, 500 US 415. That is still
8 the test in Mississippi is whether or not the jurors
9 can be fair and impartial.

10 The case that opposing Counsel has cited of
11 Hickson is not a case that applies here. There are
12 very distinct situations in the Hickson case that the
13 Court reversed it on. And to start with, I would
14 like to point out to this Court, and I am sure this
15 Court has seen it in the opinion. That was not a
16 majority opinion to start with. It was a plurality
17 opinion, and in that opinion it was not even reversed
18 on the issue of what happened in the jury room. Four
19 of the Supreme Court Judges ruled that that was a
20 reason. Sullivan joined in, but concurred in results
21 only. But in that opinion, this to me is the most
22 important factor. They did not reverse it because
23 the jurors had heard about the information in the
24 case, and in that case there were a lot of jurors
25 that had heard about the case. In the Simon case
26 eight of the twelve jurors had heard about the case.
27 That is not the test. In the Hickson case the reason
28 that--

29 **BY THE COURT:** --How many had heard of it in the

1 Simon case?

2 BY MR. EVANS: Eight of the twelve jurors.

3 **BY THE COURT:** Okay.

4 BY MR. EVANS: In the Hickson case the biggest
5 problem was, as this Court has told these jurors, you
6 cannot consider these. This Court has asked each of
7 these jurors: Will you tell me; Can you tell me that
8 you will disregard anything that you have heard? The
9 jurors that are left at this point have all assured
10 the Court that they could do that. In the Hickson
11 case the skunk that the Defense Attorney is talking
12 about is one of the jurors did something that caused
13 four of the Supreme Court Judges to want to reverse
14 the case. And that was that juror said, well, how
15 about that prior conviction. They did exactly what
16 the Judge had told them not to do, and that is true
17 in any case. We have had cases, numerous cases
18 reversed in this case [sic] because of a juror,
19 because a juror did something that a judge told them
20 not to do. That doesn't mean that the case would be
21 reversed. That case would not have been reversed if
22 it hadn't been for that juror going back there and
23 not following his oath, doing something that was
24 improper.

25 I don't think you will ever find a case,
26 criminal case in this state or any other case of any
27 significance that does not have news coverage. One
28 thing that to me is very important, and there are
29 some cases on point - I am sure the Court has read

1 them - that say one thing that the Court should
2 consider; this is not a case where this is news
3 coverage right here in this area. This case has had
4 vast news coverage as in any major case. It is hard
5 to have a case where you have four people murdered
6 and not have vast news coverage. There is probably
7 as much news coverage on the coast or anywhere else
8 in this state that people have already heard that
9 this Defendant has been convicted once. That again
10 is not the test.

11 BY MR. LUMUMBA: Well--

12 BY MR. EVANS: I'm not through.

13 BY MR. LUMUMBA: Oh, I'm sorry.

14 BY MR. EVANS: Just a second, Your Honor. Also,
15 opposing Counsel asked for a change of venue. It is
16 evident from the facts in this case that if there
17 were a change of venue, there would by necessity be
18 more news coverage. Part of that is due to the fact
19 that this room is full of news reporters because of
20 the law. It is not that we are trying or the Defense
21 or the Court is trying to get this out into the news,
22 but because we are following the law, all of these
23 news reporters are here. They know what we are here
24 about, and I can assure you and I think the Court
25 knows that this is going to make the news again. And
26 if it were transferred to Timbuktu, then the news in
27 Timbuktu is going to have this murder case is
28 transferred down here and that he has been
29 convicted. So we have got the same problem again.

1 I think the Court through its questions has
2 looked at the proper standard. I think the Court
3 through its questions has approached it from the
4 proper standpoint that if any juror is tainted in the
5 least bit, that they cannot and should not serve, and
6 the Court has excluded them, and I think that is the
7 standard that we are here for. I think that is what
8 everything that we stand for is about. And I think
9 that the Court has done that. The remaining jurors--
10 now, you know, there may be others that have other
11 strikes for different reasons. That is true in any
12 case.

13 But the question that we are back here on now is
14 whether or not this case can be tried in this
15 county. And I think excluding the people that have
16 any taint whatsoever, which the Court has done,
17 assures that this case can be fairly tried in this
18 county. The jurors have gone through rigorous
19 cross-examination by Defense Counsel as far as what
20 they would and would not consider. The ones that I
21 think had any question at all admitted to Defense
22 Counsel and the Court that it might possibly affect
23 them, and those are gone from the panel.

24 As far as Rule 609 which opposing Counsel
25 brought up to the Court, the Rules of Court apply to
26 what happens in the courtroom. They do not apply to
27 the news media. They apply to what evidence the
28 attorneys can introduce in court, not what people may
29 or may not hear outside the courtroom. Again, the

1 question there is will they disregard anything that
2 they have heard.

3 That's all I have, Your Honor.

4 BY MR. LUMUMBA: Just brief rejoinder, Judge.
5 Hickson speaks for itself. Despite their exposure to
6 pretrial media publicity, the vast majority of the
7 jurors, which is not the case here, "Members
8 unequivocally stated that they could be fair and
9 impartial. The majority of them also opined that
10 they did not believe the community had" prejudiced--
11 "prejudged Hickman or was biased against him."
12 "Here too we conclude that despite the jurors'
13 declaration of impartiality and the ability to be
14 fair, it is doubtful in light of the content of the
15 articles about the other sexual battery charge
16 against" Hickman--"Hickson that he obtained impartial
17 and fair trial in Jones County." It doesn't say
18 anything about the jury room. Decision of the
19 Court: "It is therefore the Court's conclusion that
20 the trial court abused its discretion by not changing
21 venue in this case as the record evidence indicates
22 that the Jones County community was exposed to
23 pretrial media publicity that was such of character
24 and content that Hickson could not have received a
25 fair and impartial trial evidenced in part by the
26 improper" -- "Evidenced in part by the improper
27 question posed by the juror in the jury room." That
28 is just evidence of it. They do not make the
29 decision based upon that. And so it says that they

1 reverse and remand it because of prejudicial pretrial
2 publicity.

3 Now let me say this. I think that when we look
4 at these cases, there is a joinder of two basic
5 considerations in my mind as I read the cases. A),
6 the publicity, the extent of it; and B), what you
7 might call the lynch pin of the information being
8 supplied. Just how prejudicial is it is what they
9 are saying. Of course, if you had all the publicity
10 in the world and nothing in the articles really said
11 anything about the Defendant that could be considered
12 as prejudicial, then I think that you would have some
13 difficulty claiming that you were entitled to a
14 change of venue.

15 In this case both the amount of publicity and
16 the thing which is one of the critical factors which
17 biases the Defendant is everything, a lot of the
18 article biased the Defendant in giving a blow by blow
19 description of the trial. But one of the critical
20 things is that he was found guilty and sentenced to
21 death. It is impossible to purge jurors of that kind
22 of taint. So I'm not going to repeat that. I'm just
23 going to say that.

24 But the other thing that I would note to the
25 Court is that it is not this Court's-- it is not this
26 Court's function to sit here and determine whether
27 venue would be proper at this time somewhere else.
28 It is this Court's function to determine whether
29 venue would be proper here. The situation is not

1 true that the publicity has affected everyone in the
2 same way. The people in Tupelo or in Lee County know
3 that a community jury here has convicted him and
4 sentenced him to death. That is not necessarily the
5 case anywhere else.

6 And secondly and finally, let me go back to the
7 initial point that I made when we started this
8 presentation. If, in fact, this case has been
9 prejudiced for all times and forever and it can never
10 be tried anywhere else, then it has not been the
11 Court's doing. It has not been my doing. It has not
12 been the Defendant's doing, and it may have been
13 because of a miscalculation by the District
14 Attorney's Office. Maybe that is why the novel
15 approach of separating four cases that occurred at
16 the same time with specifically the same evidence
17 where four different people were killed in a vicious
18 way, a kind of case that can only prejudice people,
19 maybe that is why most district attorneys in most
20 places in the country, if not the world, try to try
21 those cases that happened in the same transaction at
22 the same time so that you won't create a scenario
23 whereby one conviction takes place and then the
24 community be too prejudiced after being engaged in
25 other publicity.

26 We are not talking about the bombing in Oklahoma
27 City which, of course, is tremendously prejudicial,
28 but nowhere with the bombing in Oklahoma City could
29 anybody print in any paper that Timothy McVae has

1 already been found guilty and convicted and sentenced
2 to death for this very act. There is nothing more
3 prejudicial than that statement. There are more
4 hideous crimes, but there is nothing more prejudicial
5 than that kind of information to tell the community,
6 a jury from a community which has already drawn
7 twelve jurors that you are here to try a case where
8 your fellow jurors have already convicted this man
9 and sentenced to death. There is nothing else that
10 you can do to make that kind of statement.

11 Now there is a way to cure it, I think, if the
12 venue is changed. I believe there is a way to cure
13 it, but that is something which somebody has to
14 consider later. Maybe if the District Attorney would
15 see fit to see what happens with the first case, and
16 if the first case is affirmed, then what is the issue
17 anyway? If the first case is not affirmed, then
18 perhaps what can happen is that you can, you can seek
19 some consolidation of the cases and try them all at
20 the same time like they should have been in the first
21 place.

22 But the point that I'm trying to say, Judge, and
23 that might be a way to try the case in the future if
24 it should be tried in the future. But it was not our
25 choice. It was not your choice, and the DA's office
26 is left with the choice that it made. And if it has
27 created a choice which has now created a scenario
28 which has biased the people - and I am sure they
29 didn't make that choice for that purpose; I'm not

1 suggesting that it did - but if it did, if that was
2 the choice and that is what has come, then I don't
3 think that they can now come in and argue well,
4 Judge, we will never be able to try this case. Maybe
5 you will never be able to try it because of you, but
6 I think that you can probably go to the coast or you
7 can go to Jackson. I didn't know about the case
8 until I got involved in it. I live in Jackson,
9 Mississippi. And maybe we need to look to Jackson,
10 Mississippi; look to Natchez, Mississippi; look to
11 places on the coast; look to Greenville; look to some
12 place that is-- well, maybe not Greenville because
13 that is pretty close to Greenwood and other places.
14 Maybe we need to look at other places, but there is
15 not necessarily no place that this case be tried.

16 **BY THE COURT:** Okay. As is apparent to
17 everybody and everybody knows, my job is to see that
18 the Defendant gets a fair and impartial trial, and
19 that is especially true in capital cases. And in
20 this case we started with 102 jurors. Out of that 63
21 have heard something about the case, knew something
22 about the case. We have now for two days had
23 individual voir dire. Out of that 63, 36 were
24 challenged for cause. Of the remaining portion of
25 that 63, 12 stated that they knew of the first trial
26 but said they could be fair. I agree with Mr.
27 Lumumba about those 12, that they, I would have to
28 excuse them for cause if it got to that point. While
29 the rules do apply to trial, I would not have allowed

1 anybody, I would not have allowed the evidence of the
2 prior conviction at trial. It was too prejudicial
3 even for impeachment purposes to be allowed at the
4 trial. So I could not allow jurors to be seated who
5 had information that I wouldn't allow if they had
6 been, if the trial had been going on. So that is 48
7 out of 102 jurors that would be, that would be
8 challenged for cause. That would leave another 15
9 who had heard of the case and may or may not can be
10 fair even though they said that they could.

11 I point out that Hickson addressed that point.
12 63 out of 102 is 60 percent. In the case, in the
13 Hickson case it was 47 out of 88, so the percentage
14 in this case is higher than it is in that case. The
15 Simon case is different because it was tried in two
16 different locations. This case is being tried,
17 attempted to try it in the same place where the first
18 case was tried. Personally, I thought after a year
19 and the fact that this case has been two years old
20 and the fact that it did not affect anybody locally,
21 that we would be able to get a jury in this case.
22 That was wrong. Had I been presented with this
23 information on the previous change of venue motions,
24 I would have granted the change of venue at that
25 time.

26 This being a capital case and otherwise, it is
27 just too much in this record that would suggest even
28 that the Defendant could get a fair trial in this
29 county because of the publicity and the prejudgment

1 of this case. In particular I think the article on
2 Sunday had a major effect on whether we could get a
3 jury here today. I find it had more effect than any
4 other publicity that we had.

5 So I sustain the Motion for Change of Venue. I
6 will have to do my own analysis of where that has got
7 to be. I want to look at-- there are several things
8 I want to look at concerning facilities and all like
9 that. I have to say to you gentlemen that this case
10 has got to go a long way from where it originated and
11 from Tupelo because it has certainly got to be
12 outside the WTVA area and the Daily Journal area.
13 And where that is going to be, I don't know, but as
14 Ms. Barneycastle says, we are going south somewhere.
15 I know everybody would like for this case to be
16 concluded including me, but what we have done in two
17 days dictates that I must change venue in this case.
18 Now I'm going to go out there and--

19 BY MR. HORAN: --Your Honor, are we going to
20 have any, be able to consider any motions today maybe
21 of closing the file here?

22 BY THE COURT: Yeah, we can probably do that.
23 Let me say this. Let me just tell everybody because
24 we have got to go somewhere else. The lawyers are
25 all enjoined to abide by the Rule of Uniform Circuit
26 Court Rules. None of the lawyers are to talk about
27 this case at all to the press. They are also
28 instructed not to leak anything to the press. I
29 don't know whether I'm going to be any better at

1 enforcing that than they are in Washington, but I'm
2 telling y'all that I expect y'all to get me in a
3 position to where wherever we go, that we can seat a
4 jury in this case. I'm going to expect that of
5 y'all, gentlemen.

6 BY MR. LUMUMBA: Judge, can I ask you a
7 question?

8 BY THE COURT: Uh-hum.

9 BY MR. LUMUMBA: Can we offer anything about
10 jury sites?

11 BY THE COURT: I will let y'all all submit to me
12 whatever you-- I don't care about having a hearing on
13 that because in the long run, I'm going to make my
14 own selection based on some investigation I do.
15 Facilities is a big factor to me especially in one of
16 these cases, and there are small counties that are
17 just not able to do that. But I will be more than
18 happy to accept anything you want to send me on that
19 from either side.

20 BY MR. EVANS: Yes, sir.

21 BY THE COURT: Okay, I'm going to go out there
22 and announce this to the jury as best I can.

23 (WHEREUPON, THE COURT WENT INTO OPEN COURT AND
24 ANNOUNCED TO THE JURY PANEL THAT THE CASE WOULD NOT
25 BE TRIED IN LEE COUNTY AND RELEASED THE JURORS.
26 FOLLOWING THAT, THE COURT AGAIN CONVENED IN CHAMBERS
27 WITH ALL COUNSEL AND THE DEFENDANT FOR THE
28 FOLLOWING:)

29 BY THE COURT: Y'all furnish me a motion-- I

1 mean an order.

2 BY MR. LUMUMBA: Okay.

3 BY MR. HORAN: Judge, at this time the first
4 thing I need to do - I need to do this on the record
5 - is move to have the exhibits from the Supreme
6 Court withdrawn, and I will submit an order. Do
7 y'all have any objection to that?

8 BY MR. LUMUMBA: No.

9 BY THE COURT: Okay, I specifically order that
10 those exhibits that have been withdrawn from the
11 Supreme Court for the purpose of this trial now be
12 transported back to the Supreme Court, placed in
13 their custody.

14 BY MR. LUMUMBA: Can I request a question
15 relevant to that?

16 BY THE COURT: Yeah.

17 BY MR. LUMUMBA: Is it possible, because we will
18 probably try to have the evidentiary hearing on the
19 identification before trial occurs, long before trial
20 occurs, can we get the Supreme Court to release
21 those?

22 BY MR. HORAN: I will go ahead and try-- I would
23 suggest that when you give me a date as to when we
24 are going to try it, I will try to submit an order
25 shortly thereafter, so I won't have to run into the
26 problems I ran into this time.

27 BY THE COURT: Okay, but he is talking about--
28 you are going to need the exhibits at the motion
29 hearing?

1 BY MR. LUMUMBA: Yeah, because of the pictures.
2 There is a couple, there are some pictures at the
3 identification hearing.

4 BY THE COURT: Okay.

5 BY MR. HORAN: That won't be any problem.

6 BY THE COURT: We will see that they are there.
7 Y'all just make sure--

8 BY MR. LUMUMBA: --Okay, well, other than-- we
9 have no objections.

10 BY MR. HORAN: There may be some, that's the
11 only thing we got back from the Supreme Court was the
12 two I.D.'s and the four shoe print photographs. And
13 the second motion would be, Judge, to close the file
14 here. I don't know what the Court's intention are
15 to-- you may want to look at Carr v. State as to
16 procedurally what you have to do in order to close
17 the file. As far as--

18 BY THE COURT: --Is it any different than
19 changing venue from here to where we go than--

20 BY MR. HORAN: --Well, you are going to have
21 to-- you can technically leave this file here as a
22 Lee County cause number. I don't know how you are
23 going to do that. If you are going to send it back
24 as a Montgomery number--

25 BY THE COURT: --No, no. The venue of this case
26 in my opinion, and you can tell me if I am wrong, the
27 venue of this case is Lee County, Mississippi.

28 BY MR. HORAN: That's right.

29 BY THE COURT: And now that venue will be

1 changed from Lee County to wherever it is going to
2 go, and I would assume the procedure would be the
3 same as it was the first time. And Joyce thinks so
4 too, that she would just make a copy of the record,
5 and she would send it on. She would keep a copy of
6 the record here and then a new copy--

7 BY MR. LUMUMBA: --Somewhere I was reading back
8 when we first got involved in this case, and I don't
9 know whether it's the rules or somewhere that suggest
10 that you leave the case with the cause number from
11 the county where it originated. Am I right or wrong
12 on that?

13 BY MR. HORAN: Well, they have a cause number.
14 It'll originally go back to Montgomery County cause
15 number, and all the appeal stuff will be listed as a
16 Montgomery County cause number because that's how
17 they will track it. But I'm talking about--

18 BY THE COURT: --I must confess, y'all are way
19 ahead of me on that.

20 BY MR. HORAN: I am talking about closing the
21 file as far as it having no access to the public and
22 I think-- that's what I am asking for.

23 BY THE COURT: Yeah. There is a procedure for
24 doing that.

25 BY MR. HORAN: Yes, sir; it is.

26 BY THE COURT: And I will do that because of the
27 fact of why I had to change venue. I will close it
28 to the public until such time as this case is
29 concluded, and then I'm going to remove that order

1 from it. Okay?

2 BY MR. HORAN: Okay.

3 BY MR. EVANS: Yes, sir.

4 BY MR. HORAN: I will submit-- well, you will do
5 your own order on that.

6 BY THE COURT: Well, you are the one got all the
7 authority on it. You figure it out and submit it to
8 me. Y'all have got no objection to that, do you?

9 BY MR. LUMUMBA: None.

10 BY THE COURT: And that order will need to be
11 not only to this file, but to go to the county
12 wherever we send it.

13 BY MR. HORAN: Okay.

14 BY MR. LUMUMBA: Can we ask for, unless there is
15 a reason not to do it, can we have the exhibits from
16 the venue hearing released to us? Do you need those
17 for any reason?

18 BY THE COURT: I don't know of any reason.

19 BY MR. HORAN: Excuse me?

20 BY MR. EVANS: Would they not have to stay a
21 part of the record?

22 BY THE COURT: I mean it's not appealable, is
23 it? I mean can the State appeal that decision?

24 BY MR. HORAN: No, sir.

25 BY THE COURT: I didn't think so.

26 BY MR. LUMUMBA: It's no big thing, I mean
27 really. The only thing that we don't have, I guess,
28 is the videotapes, but it doesn't really matter.

29 BY MR. HORAN: They are going to be sent down

1 there. They are going to be part of the record, I
2 assume. I don't know what is going to stay here as
3 far as the exhibits as far as the motion hearing.

4 BY MR. EVANS: I would assume all of this is
5 still part of the same case even though it's going to
6 a different location.

7 BY MR. HORAN: I assume the Court would let you
8 have access to--

9 BY THE COURT: --There ought to be some way you
10 could do like you do in the Supreme Court, do a
11 diminution of the record where it all doesn't have to
12 go because there is no reason for that to go to
13 that--

14 BY MR. EVANS: --I agree. I am just thinking.

15 BY THE COURT: Well, and I don't know. Y'all,
16 since you are going to be doing all this research,
17 why don't you find out?

18 BY MR. HORAN: I'm not going to do any research
19 now. You know better than that.

20 BY MR. FREELON: You got somebody for that, huh?

21 BY MR. HORAN: I just don't let the law confuse
22 me. You know, I have hard enough time. But yes,
23 sir.

24 BY THE COURT: Okay.

25 BY MR. HORAN: I don't see any reason why they
26 can't have those exhibits back unless-- do you,
27 Doug?

28 BY MR. EVANS: I don't know. I have never been
29 into that.

1 **BY THE COURT:** Well, I tell you what. I'm going
2 to order that they get them back unless y'all can
3 show me some reason they should not in say a week.
4 How about that? Is that okay?

5 **BY MR. LUMUMBA:** That's fine. Do you want us to
6 get you an order on that too?

7 **BY THE COURT:** Yeah.

8 **BY MR. LUMUMBA:** Okay.

9 **BY THE COURT:** Does that get us?

10 **BY MR. LUMUMBA:** That will do it, Judge.

11 **BY THE COURT:** Now I have a question that the
12 law enforcement folks need to know. Do y'all want to
13 talk to Mr. Flowers any more today?

14 **BY MR. LUMUMBA:** Fifteen minutes.

15 **BY THE COURT:** Okay. They want to be able to
16 transport him on back.

17 **BY MR. LUMUMBA:** We are going to talk to him
18 right in here? Is that right? We should talk to
19 him in here?

20 **BY THE COURT:** Yes, sir.

21 **BY MR. LUMUMBA:** Okay.

22 PROCEEDINGS OF 9/15/98 IN TUPELO WERE CONCLUDED.

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1 (COURT WAS DULY OPENED IN THE COURTROOM IN
2 GULFPORT, MISSISSIPPI, ON TUESDAY, JANUARY 6, 1999, AT 10:00
3 A.M. WITH HONORABLE JUDGE CLARENCE E. MORGAN, III PRESIDING
4 FOR MOTION HEARING IN CAUSE NUMBER B2401-98-00960. PRESENT
5 REPRESENTING THE STATE OF MISSISSIPPI WERE HONORABLE DOUG
6 EVANS AND HONORABLE KEVIN HORAN. PRESENT REPRESENTING THE
7 DEFENDANT WERE HONORABLE CHOKWE LUMUMBA AND HONORABLE HARVEY
8 FREELON. THE DEFENDANT WAS ALSO PRESENT. PROCEEDINGS WERE
9 AS FOLLOWS:)

10 **BY THE COURT:** Is this the motion on my
11 bench?

12 BY MR. LUMUMBA: Yes. Actually you have got
13 two motions up there. I'm only raising one right now
14 before you do the jury, and that's the one on the jury
15 question, on the venue.

16 **BY THE COURT:** Okay.

17 BY MR. LUMUMBA: Then the other one can be,
18 the other one has to do with in limine motion to exclude
19 evidence, and that doesn't have to be heard right now,
20 Judge.

21 (Pause while the Court reads the motion.)

22 **BY THE COURT:** Okay.

23 BY MR. LUMUMBA: Okay. Should I speak from
24 here or does it make a difference?

25 **BY THE COURT:** It is okay from there.

26 BY MR. LUMUMBA: Okay. Judge, we first of all
27 apologize for filing this motion late. But a number of
28 other things have delayed us in trying to get this
29 together, and we did do a lot of deliberation as to

1 whether we wanted to file it or not. But essentially,
2 what this motion does is challenge the actual venue as
3 it now stands. Either-- and in a lot of motions what we
4 talk about is appearances and not necessarily trying to
5 indict the Judge or anything, implicate the Judge of
6 anything, but appearances.

7 This is a case which arose in Montgomery County.
8 And in Montgomery County we have a 43 percent black
9 population if I'm not mistaken. I know-- we actually
10 have submitted another motion which has the statistics
11 from the census on it, and it does say 43 percent. I
12 believe it's actually probably a little higher than
13 that.

14 But in any event, in the county where the case was
15 first moved was Lee County. There was only somewhere
16 between 18 and 21 percent black population in Lee
17 County. And now the county that we have selected,
18 Harrison County, has a 21 percent black population
19 according to the last available census. So our concern
20 here is, is that although we know that the state of the
21 law is that one of the relevant considerations can be
22 whether or not the jurisdiction reflects demographically
23 the jurisdiction where the case arose at, it is not an
24 absolute requirement that the jurisdiction that you pick
25 mirrors the other jurisdiction on racial demographics.
26 We understand that. But the case law does allow this
27 Court to consider that.

28 And what we are saying is that, and obviously,
29 there can be no systematic attempt to avoid a

1 jurisdiction where it mirrors the demographics of the
2 county where the case arose. We think that is important
3 in this case because unfortunate as it may be, and I
4 don't think unfortunate arises in this Court or with the
5 particular litigants, but I think it arises from the
6 circumstances of society as we find ourselves still in
7 1999 and in 1998 is that in large part the constituency
8 and the support base for the prosecution in this case,
9 which is said to be a support base for the victims -- I
10 always take issue with that because I don't know how
11 people can determine what the victims would have wanted
12 since the victims are no longer here. So I take issue
13 with that, and I never say that. I say but the support
14 base for apparently what the victim's family believe and
15 that's, and I just take that by hearsay, and from the
16 prosecution has been largely white, in fact, all white,
17 I believe. Three of the people killed-- and these are
18 some of the considerations that the Supreme Court has
19 discussed when they talk about any kind of racial
20 scenarios in cases.

21 Three of the victims in the case have been white,
22 and the victim who we are trying right now is a young
23 white youth. Whereas on the other hand, the Defendant
24 in this case is black; his lawyers are black. And not
25 exclusively I would tell you, as the people who sit in
26 the stands in support of him or at least behind his
27 bench presumably in support, have been - there have been
28 some whites - but have been largely black and largely a
29 lot of his family and friends who happen to be black

1 because he is black.

2 So we believe that fairness would require this case
3 to be tried in a county which has a substantial black
4 population, and substantial, a word to be gauged by the
5 state that we are in, Mississippi. Now in some states
6 perhaps there is less than two percent blacks in the
7 whole state or three or four percent. This is a state
8 which has the largest black population of anywhere in
9 the United States, and in fact, I think it's about,
10 according to the last census, about 35, somewhere from
11 35 to 40, and I still believe it to be higher, but the
12 last census has 35 to 40. But more importantly, there
13 are counties in this state which are 80 percent black,
14 70 percent black, and substantially black.

15 In order to insure that the Defendant gets a fair
16 trial, we are not asking you to try it-- of course, we
17 wouldn't object if you had tried it in Leflore County or
18 some place like that. But we are asking that the case
19 be tried in a county which more reflects where the case
20 arose, a 43 percent black county. And we have listed
21 those counties there, and we ask the Court to locate it
22 there.

23 We would also point out that we understand that
24 there is other relevant considerations. One of the
25 relevant considerations is a forum of convenience. Now,
26 of course, the Court in attempting apparently to get
27 away from publicity, has gone all the way to the gulf
28 coast. But actually, so this is not the most convenient
29 forum for the witnesses, the lawyers and certainly not

1 for our law office. I don't know; they can speak for
2 their own law office although I know they are located in
3 Montgomery County. Well, I'm not sure they are located
4 in Montgomery County.

5 **BY THE COURT:** Grenada.

6 BY MR. LUMUMBA: Pardon?

7 **BY THE COURT:** Grenada.

8 BY MR. LUMUMBA: Okay, Grenada. They are
9 located in Grenada which is further north even than
10 Montgomery County. So our view is that for the lawyers,
11 the witnesses and stuff, this is not the most
12 advantageous county. There are a lot of witnesses in
13 this case, so I think what provides the forum of
14 convenience for witnesses is important. Also, I
15 understand from having interviewed witnesses that
16 appeared at the last trial is that there was a bus
17 service provided for the prosecution's witnesses.
18 Similar service was not provided for the defense
19 witnesses, and the defense doesn't have that kind of
20 money to afford to hire a bus, which means that I guess
21 we are even at more of a disadvantage than the
22 prosecution's witnesses. So and then as far as family
23 members and things that want to attend, I understand
24 there was a bus, a public, a school provided bus for the
25 family members of the victims whereas that same service
26 was not provided for Defendant's family which again,
27 puts us at a further disadvantage. And I think all
28 these things play into the atmosphere of a fair trial.

29 But most importantly, all the counties that we have

1 listed in the motion are counties which have large court
2 facilities, fairly large jurisdictions compared to
3 Mississippi jurisdictions, and would accommodate and
4 they certainly have courtrooms this size. I try cases
5 in Hinds County frequently, and it's a large courtroom.
6 I went and visited Adams County. It's not, it may not
7 be as large as this courtroom. I haven't counted the
8 seats. I did count seats in Adams, and I believe there
9 was over 300 seats, you know, to accommodate people and
10 things of that nature.

11 All of these counties would say closer to Winona
12 than this particular county, and in some of these
13 counties are as far away-- well, would not, most of
14 these counties would be no more affected by the
15 publicity than this county right here. I understand
16 that there was some statewide publicity. But if it's
17 statewide, then this county is still in the state, so it
18 would have reached here too.

19 So those are the concerns that we have, and we
20 would ask for that reason the Judge to consider another
21 county, one of the ones listed on the list. And there
22 are other counties with 30, at least 30 percent black
23 populations like Lafayette, like Oktibbeha. My guess is
24 that would be the case with the county that Meridian,
25 Lauderdale County where Meridian is located, and various
26 other counties in the state. I'm not too sure about the
27 county that contains Hattiesburg, but there are other
28 counties in this state I know that have at least a 30
29 percent black population. And we would ask for one that

1 has one as close to Montgomery County as possible.

2 But in the alternative, we would also say that it
3 should be tried in the another county and in a county
4 where the convenience is the same or more convenient.
5 And if we're not going to do that, then I guess we are
6 saying in the alternative, it just should be returned to
7 Montgomery County because I'm not sure that we are
8 really avoiding the publicity angle by coming to a
9 county here. And for what is lost, we think that it
10 would be better to try to pick a jury from Montgomery
11 County than to come to this particular county.

12 One second, Judge.

13 (Pause while Mr. Lumumba confers with Mr.
14 Freelon).

15 BY MR. LUMUMBA: I have no further argument.

16 BY MR. EVANS: Your Honor, I will try to be
17 brief on this because I don't think there is any reason
18 for this motion to even be filed. To start with, as
19 this Court knows, when we were in the process of
20 attempting to pick a jury in Lee County, none of the
21 jurors that were excused were excused because of any
22 racial reason. The jurors that were excused were
23 excused because of publicity that had been given at that
24 time. This Court, along with the defense in those
25 motions, made comments that this case might have to go
26 all the way to the coast to prevent a county that
27 publicity had been given in. As this Court knows and
28 for the record to be clear, the State did not even
29 submit any counties for the Court to consider. This

1 was, I assume, brought to the coast in an attempt to
2 avoid a place that there had already been a lot of
3 publicity.

4 Even though I don't think I have to approach it, I
5 want to comment on a couple of issues in this motion.
6 One is the absurd comment in this motion that there was
7 a victim's rights group that was headed by white people
8 that were to help white people. There is a victim's
9 rights group in Lee County that attempted to try to
10 raise some money to help defer some of the expenses of
11 the victim's families. This went to the white victims'
12 families along with the black victim's family, but the
13 Defense Counsel wants to forget that there is a black
14 victim in this case, which murder is color blind. The
15 Court is color blind, and nothing in this has to do with
16 race other than the fact that they are trying to make
17 this a racial case.

18 They tried it in Lee County when a Muslim group
19 that is associated with them attempted to pass out
20 pamphlets accusing the Court and the District Attorney
21 of being bias and improper in the case. Everything that
22 has been brought out about race has been an attempt by
23 the Defense to attempt to do that.

24 Also, Your Honor, I want to point out that
25 basically, this is a motion for change of venue. The
26 Court has already set this case for this county with the
27 approval of Defense Attorney. There was no objection
28 from him to this county being the county that the case
29 would be tried in. And also, for it to be now a change

1 of venue motion, it is not properly filed because there
2 are no affidavits attached that the Defendant could not
3 receive a fair and impartial trial here.

4 There is no reason for this case to be moved
5 anywhere else, and we ask that this motion not be
6 sustained.

7 BY MR. LUMUMBA: Just a brief rejoinder,
8 Judge. I don't know who this Muslim group is but--

9 BY MR. EVANS: I believe he knows very well
10 who it is. He brought them in the courtroom in Lee
11 County.

12 BY THE COURT: Well, wait a minute, Mr. Evans.
13 It's his time now.

14 BY MR. LUMUMBA: Okay, I know of no Muslim
15 group that is associated with the case. I suspect that
16 most groups that black people are in nowadays probably
17 contain some Muslims, but to say it's a Muslim group,
18 you know, and sometimes people say that because of
19 people's names. My name is Chokwe Lumumba. I'm not a
20 Muslim. I go to Anderson United Methodist Church, and
21 so I think that that is a-- that is the kind of problem
22 that I am concerned about because I am sure Mr. Evans is
23 well intended, but he just presumes that this is a
24 Muslim group because somebody in it might have a Muslim
25 name or a name that he thinks is Muslim. Chokwe Lumumba
26 is also not a Muslim name. It's an African name,
27 original African name, and it was there before the
28 Muslims reached the continent of Africa.

29 But be that as it may be, that's the kind of

1 prejudices that we kind of have, and when we pick a
2 group of jurors, that is the kind of prejudices they
3 come in with. One of the things that we pointed out is
4 that all jurors who did acknowledge a bias against the
5 defense in this case that I can recall - now I don't
6 want to say that there was not one black who said that
7 they were bias against the Defendant.

8 But if I'm not mistaken, all the jurors who did
9 acknowledge a bias actually against the Defendant in our
10 jury selection attempt were actually white. And I don't
11 think that that is a coincidence. I mean we can deny it
12 and do whatever we want to do, but I don't want to do
13 that. We are trying to play to the jury on the white
14 issue, on the race issue. Well, that is really not
15 true. And if he feels that that is the way we are going
16 to try this case, then that is fine. That is fine; he
17 can feel that way. But anybody and I'm not, I'm not
18 assuming that he feels we are intelligent. But anybody
19 that is in a, who winds up in front of a venire and a
20 jury pool which is predominantly white would probably
21 have a problem trying to try the case on a race
22 question.

23 In fact, I am a little concerned today. In fact, I
24 have tried cases with prosecutors for a long period of
25 time, and I don't think-- there is some prosecutors I
26 have seen that don't do it, but most of the time they
27 exclude black people from the jury, and then they do
28 raise a little bit of race bait in there on some way or
29 another, either quietly and surreptitiously or some of

1 them. And maybe Mr. Evans won't do that, but I don't
2 know what he is going to do. But all I'm trying to say
3 is we need to try the case in the best environment as
4 possible.

5 It's really not a motion to change the venue--
6 well, unless the Court wants to consider it as such and
7 it is okay with me. We, all we are saying is that this
8 motion is to pick a venue which is and to repick a venue
9 which I believe would be more in line with this case and
10 be fairer to this case. That's our concern.

11 We did not agree to this county. What did happen,
12 I will point this out. The Court did gratuitously-- in
13 fact, I think it was on my request, and I'm going to
14 admit some delay-- I mean I wouldn't call it delay but
15 some, we did not respond to something as soon as we
16 should have. What happened is I requested of the Court,
17 I said to the Court and it's probably on record. I said
18 can we make suggestions of the venue. All right. The
19 Court said yes, if you want to, and you didn't express,
20 you didn't ask for them nor did you say you were not--
21 you just said we could if we wanted to. That's what you
22 said. We did not get this before you picked this jury.
23 At the very moment that you picked the jury--

24 BY MR. FREELON: --Venue.

25 BY MR. LUMUMBA: Or venue, I'm sorry. Before
26 you picked the venue, I was actually in Adams County
27 looking at the jurisdiction, and I think I may have
28 mentioned to you at some point off the record, what
29 about Adams County. You know what I'm saying? But we

1 did not officially do it. So I'm not blaming the Court
2 for that. But what I am saying is that we have brought
3 this to the Court's attention before the computer has
4 done its job to pick, you know, names out, so I think
5 it's timely.

6 So the only thing that I'm saying to the Court is
7 that for the reasons I have stated and for no other
8 reasons, I believe that we should do this. I mean, you
9 know, because if a conviction comes out of this, and I
10 know everybody don't always perceive this, but if a
11 conviction comes out of this, you know, people have
12 perceptions. Now some people say they are wrong, and
13 some people say they are right. But I mean a lot of
14 what we think is right or wrong about perceptions
15 depends upon how we are raised, who we are raised with,
16 and what our experiences are. They don't have anything
17 to do with whether you are a Muslim or not a Muslim,
18 right. In fact, there is some racist Muslims. You
19 know, some of the most racist people in the world who
20 invaded Africa long before the Europeans got there were
21 Muslims. So that has nothing to do with that.

22 But the fact of the matter is that people's
23 perceptions are if you have all white juries that
24 convict black defendants in cases where some of that can
25 be called in question, then we should, you know, that
26 does not do a whole lot to an air of confidence in the
27 system, at least not in the community I come from.

28 So I think that it would be good to avoid that
29 circumstance, and this is why I am bringing it to the

1 Court's attention, and we would ask the Court to pick a
2 different venue for that reason. I mean I don't have
3 anything against a golf course. It's much warmer here.
4 I don't know; it is probably going to be a lot more
5 expensive for me to be here. But it is much warmer
6 here. And just, and I know this is not scientific or
7 anything because we don't have the money to keep doing -
8 what you call it - surveys to have somebody say-- when a
9 group comes up and volunteers to do one that they are
10 biased and that they were just trying-- we don't have
11 that kind of money. He doesn't have that kind of
12 money.

13 But I do know and just the little, few lawyers I
14 have talked to that, you know, it's about the same
15 everywhere. I mean in Lee County, of course, there was
16 a lot of people that heard about the case because you
17 tried it up there, all right. In most of these other
18 counties there are still people that know about the
19 case. I mean I'm not claiming to have done a survey,
20 but according to the lawyers that I have talked to, -
21 and some were down here - they know about the case, and
22 at least these lawyers know about the conviction even
23 though they had nothing to do with the case.

24 So you are going to have that problem. I don't
25 know how we are going to escape that problem other than
26 the fact that perhaps we really should wait until the
27 Supreme Court decides on the appeal before we even try
28 this case. But and if the Supreme Court reverses the
29 conviction in the first case, then you won't have the

1 problem of having a bunch of news out saying he was
2 convicted and sentenced to death without the
3 corresponding news saying that he was relieved of the
4 conviction by the Supreme Court. If the Supreme Court
5 upholds the conviction of the death sentence in the
6 first case, I really don't see why we are even trying
7 this case to be quite honest with you because the man
8 can only die once. You know what I'm saying?

9 But in any event, that is the way I'm thinking, and
10 I don't know; I doubt that Gulfport - and I don't know;
11 I'm not going to make a statement on that, but I don't
12 know that Gulfport is as knowledgeable about this case,
13 the Gulfport area; I shouldn't say Gulfport - is as
14 knowledgeable about this area as Lee County. You know,
15 one would assume not because it was not tried in Lee
16 County, but when you compare it to places like Hinds
17 County, Warren County, Adams County, there is not going
18 to be a difference. They know about it as much and
19 don't know about it as much. I think that's the same
20 situation.

21 **BY THE COURT:** Okay, while this is not styled
22 a motion for change of venue, since I have entered an
23 order changing venue down here, any move from this venue
24 would be a change of venue, and therefore I must take
25 note of the fact that the motion is-- well, it's
26 entitled Motion to Change Venue. And in order to be an
27 effective motion to change venue, it has got to have the
28 two affidavits stating he couldn't get a fair trial
29 here. That is one of the considerations that I have to

1 take into account.

2 The other one is when the second trial, when we had
3 the second trial set in Lee County, after a year had
4 passed, I anticipated that we would have no problem
5 getting a jury up there just like we did not have a
6 problem getting it the first time that we were there.
7 After going through that experience up there, I am
8 convinced that had the Northeast Daily Journal not
9 gotten actively involved in the case the day, the
10 weekend before the trial, that we would have been able
11 to get a jury and try it up there. All of the jurors or
12 most of the jurors that were excluded were excluded
13 because of that particular, of the articles in the Daily
14 Journal up there, some by television and some by the
15 Clarion Ledger.

16 So publicity was the main reason that the case had
17 to be tried. Other than that, I think the panel was
18 such that you could have drawn a jury. I then had to
19 look for a place to change venue to. Because of the
20 circulation of the Daily Journal in north Mississippi,
21 that just about excluded north Mississippi. What it
22 doesn't cover up there, the Clarion Ledger does. The
23 Clarion Ledger on the first case had actively been
24 present in the court and covered that case. They had
25 some-- they were not present, I don't think, at the
26 second, at the second trial, but they had, they did run
27 articles concerning it. So all of the north
28 Mississippi, what the Northeast Daily Journal doesn't
29 cover, Clarion Ledger covered.

1 In addition, Channel 9 in Tupelo had extensive
2 coverage. That was one of the considerations that the
3 Court took into account when it changed venue. WCBI in
4 Columbus, WABG in Greenwood - when you put those three
5 together and you add them to the cable coverage that
6 they have, they cover all of north Mississippi and far
7 down into south, into central Mississippi. They cover
8 past Attala County which is the center of the state.
9 They cover down to Meridian.

10 Obviously, Hinds County is the headquarters of the
11 Clarion Ledger, so that is probably the most extensive
12 paper read in that county. It is also the most
13 extensive paper read in central Mississippi, both north
14 central Mississippi and south central Mississippi all
15 the way down until you get down this far.

16 The Court did consider some other places. It
17 considered Adams County; it considered Jones County. It
18 considered Forrest County where the Court has tried a
19 capital murder case before, and then took into
20 consideration that the primary news source down here
21 from a print media is the Sun Herald. It is localized
22 to the southern part of the state. To my knowledge, it
23 has not had extensive coverage of this case when it
24 happened or any time since then. The Clarion Ledger is
25 the secondary paper down here. The television stations,
26 I do not know. Y'all may show this to me later, but to
27 my knowledge, the television stations down here have had
28 no coverage of this case whatsoever.

29 In considering, I decided then that the case must

1 go to one of the coast counties to get away from the
2 thing that caused it to be moved from Tupelo. In doing
3 that, I considered demographics of all the counties on
4 the coast and found that Gulfport was the best one.
5 There are counties on the coast with less black
6 population than what this county has. I believe I am
7 right, and I believe Harrison County has the largest
8 black population on the coast, and I took that into
9 consideration when I set it for the First Judicial
10 District of Harrison County. I also set it for the
11 First Judicial District rather than the Second Judicial
12 District because it does have a higher black population
13 in it.

14 Those are the considerations that I took, and so I
15 overrule this motion. Of course, it is always subject
16 to what happens in voir dire, where we are there.

17 Can we-- excuse me; go ahead. Can we go pull the
18 names of the jury?

19 BY MR. LUMUMBA: Yes. Is the Defendant going
20 to have a chance to be there?

21 BY THE COURT: Yes, sir.

22 (WHEREUPON, THE COURT, ALL COUNSEL, THE
23 DEFENDANT, AND THE COURT REPORTER WENT ACROSS THE HALL
24 TO THE CIRCUIT CLERK'S OFFICE, AND THE NAMES OF THE JURY
25 PANEL WERE DRAWN AS FOLLOWS:)

26 BY THE COURT: Y'all want on the record how
27 they go about selecting the jury, the pool and all?

28 BY MR. LUMUMBA: Yes.

29 BY THE COURT: All right. Ms. Ladner. This

1 is Connie Ladner. She is Deputy Circuit Clerk. She is
2 going to be in charge of pulling the venire from the
3 jury pool here today. We have got two judicial
4 districts in Harrison County, First and Second. We are
5 in the First. Ms. Ladner, if you would for the record,
6 if you would tell for the record how y'all go about
7 selecting folks that go into the jury wheel?

8 BY MS. LADNER: Okay, the Jury Commission
9 meets once a year. They meet in April of each year. We
10 choose however many jurors we think will be sufficient
11 to cover the entire year of jury selection. The Jury
12 Commission will divide the number of registered voters
13 in whichever district by the number of jurors we need
14 for the year to come up with a starting number and the
15 key number. Then it is randomly selected by the
16 computer.

17 BY THE COURT: Okay, all right. I guess we
18 are ready.

19 BY MS. LADNER: We are choosing just from the
20 First; is that right?

21 BY THE COURT: Just from the First.

22 BY MR. LUMUMBA: Yeah.

23 BY MS. LADNER: How many did you want?

24 BY THE COURT: 350.

25 BY MS. LADNER: What date is this returnable?

26 BY THE COURT: The 22nd of March. As somebody
27 pointed out that is the Ides of March.

28 (Pause while the computer was selecting the
29 names of the jurors.)

1 BY MS. LADNER: How many copies of the jury
2 list do we need?

3 BY MR. HORAN: Seven is what we got last.

4 BY MS. LADNER: Seven.

5 BY MR. LUMUMBA: Seven copies of the jury
6 list.

7 BY THE COURT: Yeah, I am assuming the seven
8 includes you?

9 BY MR. LUMUMBA: Did you include us?

10 BY MR. HORAN: Right. That's what we had last
11 time including defense attorneys.

12 BY MR. EVANS: If you can, we would like to
13 have at least one copy each alphabetically two.

14 BY MS. LADNER: We can print a venire without
15 the addresses alphabetically--

16 BY MR. EVANS: --That is fine.

17 BY MS. LADNER: But with the addresses it's
18 by--

19 BY MR. EVANS: That's fine.

20 BY MR. LUMUMBA: So does that mean we are
21 doing it both ways? Is that what we are doing?

22 BY MR. EVANS: Yeah.

23 BY MR. LUMUMBA: Both ways, okay.

24 BY MR. EVANS: So it will be easier to cross
25 reference.

26 (THE LISTS WERE THEN PRINTED AND DISTRIBUTED
27 TO COUNSEL, AND THE COURT TALKED TO COUNSEL OFF THE
28 RECORD AND OUT OF THE HEARING OF THE COURT REPORTER
29 WHILE THAT WAS GOING ON. WHEREUPON, THE COURT, ALL

1 COUNSEL, THE DEFENDANT, AND THE COURT REPORTER RETURNED
2 INTO OPEN COURT FOR THE CONSIDERATION OF FURTHER MOTIONS
3 AS FOLLOWS:)

4 BY THE COURT: Okay, what have y'all got
5 next?

6 BY MR. FREELON: Just one second.

7 BY MR. LUMUMBA: Yes, Judge. Since we just,
8 we did just pick the jury. I just want to bring
9 something to the attention of the Court with respect to
10 the questionnaires. If I can put that on the record and
11 I think the Court is going to take, might be taking this
12 under consideration; I don't know.

13 BY THE COURT: Okay. This is what we just
14 talked about?

15 BY MR. LUMUMBA: Yes.

16 BY THE COURT: All right, go ahead.

17 BY MR. LUMUMBA: Okay, on the questionnaire
18 which I do not have in front of me. Do we have a
19 questionnaire?

20 BY THE COURT: I have got it if you want to
21 look at it.

22 BY MR. LUMUMBA: The Court on the
23 questionnaire, as I recall it, and I don't have one in
24 front of me, but it asks the question about the death
25 penalty. And I think that is the last question if I'm
26 not mistaken.

27 BY THE COURT: Okay, go ahead.

28 BY MR. LUMUMBA: Right. I believe that the
29 question, what that question comes from is what we call

1 the Witherspoon challenge. The Witherspoon challenge is
2 a challenge whereby a juror can be challenged if, in
3 fact, that juror has problems with the death penalty to
4 the extent that they cannot consider giving the death
5 penalty. Later on in law they developed something
6 called the reverse Witherspoon challenge. The reverse
7 Witherspoon challenge really is whether a juror, based
8 upon the fact that they automatically feel that people
9 should get the death penalty if they are convicted of
10 capital murder, whether they would give the death
11 penalty to everybody convicted of capital murder. Both
12 of those positions are equally in conflict with the
13 standard that a juror should be exercising according to
14 case law.

15 On the one hand, any juror who sits in a capital
16 case the Court would expect them to be able to consider
17 whether or not they should give the jury a death
18 penalty. On the other hand, any jury in a capital
19 murder case, the Court would expect them to be able to
20 consider that a person, to need to be convinced even
21 after they are convicted that they have to get the death
22 penalty or that they should get the death penalty. In
23 other words, anybody who automatically concludes that a
24 person should get it because of the fact that they are
25 convicted of capital murder, and they just believe
26 everybody convicted of capital murder should be
27 sentenced to death is not a person who is allowed to sit
28 on the jury according to the reverse Witherspoon.

29 My problem with the questionnaire, and I understand

1 that the questionnaire is not supposed to be a precise
2 voir dire on the questions to be raised in jury voir
3 dire-- when the venire or the pool is selected. But I
4 think with the jury, the questionnaire is supposed to
5 help us. The questionnaire actually hurts the Defense
6 in two ways without corresponding help. On the one hand
7 it flags for the District Attorney everybody who has a
8 reservation to the death penalty and allows him to
9 perhaps cement that reservation before they have a
10 chance to be rehabilitated.

11 And let me say that studies have shown
12 psychologically, once you write something down, you
13 become more committed to it than if you never write it
14 down. I believe that is true. In other words, once you
15 take a position, then it becomes more difficult for you
16 to change it.

17 Now we don't have the reverse question as to
18 whether or not they would automatically want to impose
19 the death penalty on anybody convicted of capital
20 murder. So I would recommend that we either add that
21 question or in the alternative, that we strip the
22 questionnaire of all questions or in the second
23 alternative, that we add a statement-- eliminate that
24 question and add a statement which would more reflect a
25 question that would be helpful to all of us which would
26 still require some voir dire because no matter what you
27 ask, you cannot resolve the matter just based upon the
28 questionnaire. So there will have to be voir dire on
29 it.

1 And the question that I would say that you ask in
2 the third alternative would be, "Circle the statement
3 below that best represents your view on the death
4 penalty. (1) I strongly support the death penalty. (2)
5 I support it. (3) I have no opinions with respect to
6 the death penalty. (4) I strongly oppose the death
7 penalty, or (5)"-- no, excuse me. Four should be, "I
8 oppose the death penalty," not strongly oppose the death
9 penalty. And (5) would be, I strongly support-- "I
10 strongly oppose the death penalty." In other words, the
11 difference between question one and two and question
12 four and five is that you add "strongly" to one of them
13 in terms of strong opposition or strong support.
14 Whereas the other one, you just say I support or I
15 don't. You know, I support or I don't.

16 And of course, that could be reduced to three
17 questions. "I support the death penalty. I have no
18 opinion on the death penalty, or I oppose the death
19 penalty." It could be reduced to three. What I'm doing
20 is reflecting the system which is used in Hinds County
21 which has those direct questions; plus it reflects upon
22 strong opposition or what would be considered as more
23 moderate opposition or strong support or more moderate
24 support.

25 What that would do is give us a view into the mind
26 of the jurors on the death penalty issue and then open
27 it up for fair voir dire. So those are the three
28 alternatives that I would suggest.

29 There is only one other question that we felt that

1 we were supposed to have asked on the questionnaire
2 before which never was asked, and that was the question
3 about race. If people had any racial views which would
4 reflect, which would affect their ability to be fair and
5 impartial. If I'm not mistaken, that question is not
6 included on the questionnaire that we have. I'm not
7 sure, but I think that that is not included.

8 **BY THE COURT:** How do you propose to ask that
9 question if it's not on there?

10 **BY MR. LUMUMBA:** I think it can be, Do you
11 have any racial views which would influence your ability
12 to be a fair and impartial juror in this particular,
13 fair and impartial juror, I guess.

14 **BY THE COURT:** Okay. Anything else on that
15 point?

16 **BY MR. LUMUMBA:** Those would be the two things
17 on the questionnaire. We would, of course, stick-- we
18 made earlier arguments on the questionnaire. I'm not
19 trying to remake those, and we don't waive any of
20 those. But those are the ones which we made earlier
21 that we stand by.

22 (Pause while the Clerk hands the Court
23 something that was just filed.)

24 **BY THE COURT:** Okay.

25 **BY MR. EVANS:** Your Honor, first as to the
26 question about racial biases, we have covered that once
27 already before. It was our position then and it is
28 still our position that race has nothing to do with the
29 trial in the criminal courts of this state, and it

1 should not be an attempt to put that in the jurors'
2 minds that it might have any bearing. If the Defense
3 wants to cover that on voir dire, that's their
4 prerogative, but I don't think it's right for the Court
5 to even bring the issue of race up unless it has been
6 brought up by the Defense.

7 As to the question--

8 **BY THE COURT:** --Let me ask you one question
9 because I don't remember back then. On the several
10 questionnaires that y'all presented, I don't believe
11 that question was presented to me in that form though,
12 was it? Wasn't it different?

13 BY MR. LUMUMBA: Are you asking me, Judge?

14 **BY THE COURT:** Well, I was asking him. I will
15 ask you in a minute.

16 BY MR. LUMUMBA: Okay, I'm sorry.

17 BY MR. EVANS: I believe it was a little
18 different form.

19 **BY THE COURT:** Okay, all right. I will let
20 you respond to that. Go ahead.

21 BY MR. EVANS: As to the death penalty, I
22 think that question has never been in a position where
23 the Court said it was improper. That question, I think,
24 is definitely proper for a questionnaire. It brings up
25 a clear point that is easy for the jury to understand,
26 that if they have an opinion that would keep them from
27 even considering the death penalty as a possibility,
28 that they are not proper jurors, and that is an
29 important issue to go over for both the State and the

1 Defense.

2 This gives the Defense-- now he says it doesn't
3 help them. It gives them as much of a benefit as it
4 does us. It gives us an insight as to their feelings on
5 the death penalty, but it also gives the Defense an
6 insight on the ones that they need to attempt to try to
7 rehabilitate. And I have never been in a capital case
8 where some of the ones that said that they didn't
9 believe in the death penalty weren't rehabilitated and
10 sat on the jury. That is going to happen in any case.

11 As for the other questions that they are inferring,
12 I don't think they are proper. I don't think it's
13 improper-- that it is proper to go into trying to scale
14 their beliefs on the death penalty. To start with, if
15 they believe in the death penalty, all that says is they
16 believe in the law.

17 **BY THE COURT:** He is just offering that as an
18 alternative.

19 **BY MR. EVANS:** Because that is what the law
20 says is a proper sentence. That doesn't mean they have
21 to give it. As far as voir dire, it is easy for the
22 Court on voir dire to explain to the jury during its
23 death qualifying of the jury, during that part of it,
24 that the jury cannot systemically give the death
25 penalty, that they have to look at certain things. They
26 have to look at does the law in this case justify it; do
27 the facts in this case justify it. If they do, they can
28 consider that as a proper opinion, but I think to get
29 into the fact would you give the death penalty if the

1 case was proven -- well, what is proven? If everything
2 is proven, then they definitely can give the death
3 penalty because they have considered everything.

4 You know, without the Court instructing them and
5 explaining to them what steps they have to go through --
6 now if the Court wants to take the time in this
7 questionnaire, which I think would be misleading-- not
8 misleading, but confusing, I think the only way that we
9 could do it would be if the Court would go step by step
10 in the questionnaire explaining what the steps would
11 be. To start with, that if you find him guilty, then
12 you would look at the evidence in the case, determine if
13 the law justified the death penalty, and if the facts
14 justified it, and if the facts justified it at that
15 point, could you consider it. Or in the alternative, if
16 the facts didn't justify it in this case, would you
17 still give the death penalty? That would be improper,
18 but it is very confusing. That is something that can a
19 lot better be covered by both the Court and both
20 attorneys on voir dire instead of in a single question
21 on a questionnaire.

22 I think the questionnaire as it is on the death
23 penalty helps both sides. It is a question that in just
24 about every case that I have been involved in, it has
25 been agreed to by both sides because both sides wanted
26 the input of the jury on that question. But to go into
27 anything further on voir dire, I think, would cause too
28 much confusion.

29 That is all I have got, Your Honor.

1 BY MR. LUMUMBA: Judge, to your first inquiry,
2 I do not-- we gave you, we gave you a set of questions
3 that we would like to have been added to the
4 questionnaire. In fact, it may have been an alternative
5 questionnaire. At least we had gave you some questions,
6 and it asked the racial question. It did not ask it
7 precisely like that, the way I just proposed it. It
8 didn't ask it that way.

9 But just to bring you back to what I argued before
10 and what I believe to be true, I believe that you did
11 agree to put a question about race on the questionnaire,
12 and I believe that that question was reflected in a
13 questionnaire that the District Attorney prepared after
14 you agreed to do it. In other words, it was not the
15 original, and then it was reflected later. And what I
16 believe happened is that somehow these questionnaires
17 got interchanged, and you sent out the one that had no
18 race question in it. You said that you don't think
19 that's the way it happened, but regardless of how it
20 happened, there was a question that was actually
21 approved about race at least orally by you from the
22 bench. Now it may have been you approved of the
23 subject, and you wanted to see a question. That could
24 have been, but somehow or another we were supposed to
25 have a question about race, and it never got in it.

26 But to answer your question as to whether or not
27 that mirrors the question that we gave you in our sample
28 voir dire, no, it does not. But the question that the
29 way I phrased it, you know, would be; it can be

1 considered as an alternative way to ask it as opposed,
2 an alternative to you having rejected apparently what we
3 had on our first questionnaire, if you did, then I would
4 think that we should ask it that way.

5 Okay, finally, as to this other issue, you know,
6 unfortunately, apparently I didn't-- I mean I think that
7 we need to look at the case law appropriately. This
8 thing in this day and age about reverse Witherspoon is
9 extremely strong and extremely important. If a person
10 automatically believes, and there is a couple of ways
11 you can ask this question. (A), Do you believe that a
12 person convicted of capital murder should automatically
13 get the death penalty? If they say yes to that, they
14 are absolutely unqualified to be a juror.

15 **BY THE COURT:** Subject to being
16 rehabilitated.

17 BY MR. LUMUMBA: Oh, yeah, certainly;
18 certainly. Certainly, yeah; I mean that is always
19 true. But they are as unqualified as a person who says
20 they can't consider the death penalty under any
21 circumstances, and that is really the appropriate way to
22 ask that question. Of course, another way to ask the
23 reverse Witherspoon question would be to say - and we
24 don't have opposition to this - is that Do you believe
25 that a person who is convicted of capital murder should
26 be given the death penalty regardless of any other
27 circumstances? You know what I'm saying? That is
28 another way of saying they should automatically be given
29 the death penalty.

1 But, and so both of those questions are valid
2 questions under the case law, and really to the extent
3 that you can ask one on the questionnaire, there is
4 nothing wrong with you asking the other on the
5 questionnaire. Both of them really involve some other
6 education about the law, but what we are trying to do is
7 just flag any concerns. And what my problem with what
8 the District Attorney wants to do, it will help him flag
9 his targets and not help me flag mine. And what I'm
10 saying here, this whole thing about then I know who
11 needs to be rehabilitated; I'm going to know that anyway
12 once the issue comes up in the voir dire. I'm going to
13 know who I need to try to rehabilitate. If it comes up
14 at all, I have a chance to rehabilitate them. The
15 problem, and if you ask this question in the way that I
16 have suggested it-- I would have a chance to
17 rehabilitate them once it comes up if you don't ask the
18 question at all. If you do ask the question and you ask
19 it kind of like in the way that I have suggested it,
20 either with the alternatives that I put in my second
21 suggestion or if you ask it with the scale that I put in
22 my third suggestion, I still know who I have to
23 rehabilitate. And the thing is it is fair because he
24 knows all the same things I know.

25 The problem with asking it the way that he wants
26 without the other side is that it is of aid to him and
27 no aid to me. Once a person is flagged as having some
28 conscientious objection to the death penalty, that
29 person is gone. That person is dead, gone. If he

1 doesn't get eliminated in the challenges for cause, it
2 is no question that the District Attorney is going to
3 eliminate them in their peremptory challenges. And that
4 is one of the reasons that you are allowed to ask these
5 questions is for peremptory challenge purposes. So for
6 him to say I know who I have got to rehabilitate, fine;
7 I rehabilitate them; you don't challenge them for
8 cause. You don't exclude him for cause, and then he
9 knocks him out or knocks her out.

10 The other problem that we have and I mean I know
11 that the District Attorney claims that I am trying to
12 inject race into the case like this is a country that
13 hasn't lived for centuries with racial problems. And
14 what the Court's obligation is and our obligation as
15 attorney is to try to silence those influences. You
16 don't handle influences by acting like they don't exist
17 and then just let them go ahead and affect the outcome
18 of the case. You handle questions by raising them and
19 dealing with them, and that is essentially what the case
20 law has consistently said.

21 If that wasn't true, then you never would have had
22 challenges under that Alabama case, and I forget the
23 name of it-- Swain versus Alabama which stopped the
24 systematic exclusion of blacks from juries. They never
25 asked about, they never raised race in those cases.
26 They never came in and said, Blacks are no good; I am
27 throwing them all off. They just excluded them. And
28 then the same thing is true in the other case, the
29 individual exclusion of the jury, the Batson case - I

1 think I am saying that wrong - versus Kentucky. The
2 Court knows the case I'm talking about where they
3 exclude jurors.

4 You have to deal with these questions, and any
5 trial lawyer is trained in law school-- well, I don't
6 know about law school. I don't know if they train you
7 to be a trial lawyer in law school, but when you get
8 trained to be a trial lawyer, you get trained to know
9 that the best way to deal with problems which exist is
10 to bring them up and then try to get the jurors in their
11 own conscience to deal with it because if they still
12 exist and they don't deal with it, that's the same
13 reason why you deal with publicity. If you just let
14 people sit out there and be sweltering in their beliefs
15 on publicity and feel that you have handled it because
16 you haven't brought it up, then, in fact, that would be,
17 I think, inappropriate by the standards of the law and
18 every other problem.

19 So what I'm saying here in the final analysis is
20 this. As far as the District Attorney is concerned is
21 that I need the same advantages with this questionnaire
22 that he gets, and if we are not going, either one of us
23 going to get an advantage from it, then fine. I need to
24 be able to flag people who are ardent supporters of the
25 death penalty or who believe that everybody who goes
26 through a court and gets convicted of capital murder
27 should get it. All right.

28 The truth of the matter is, is that my question is
29 really just a little soft on that issue because the

1 truth of the matter is the law says that even if they
2 are convicted of capital murder and even if you can give
3 it, then you still don't have to give it. You know what
4 I'm saying? That's what the law says. You know, you
5 can decide that (a) they are convicted of it; (b) there
6 is sufficient aggravating circumstance to give it to
7 them; and then (c), you can still decide, you still have
8 to go the third step and decide whether I will give it
9 to him in this particular case.

10 So really my question, just to kind of summarize
11 it, it helps and if we use this third one where it says
12 strongly support, support, no opinion on the death
13 penalty, oppose the death penalty, or strong opposition
14 to the death penalty. To me that is kind to everybody.
15 I mean it does what everybody would like to have done.
16 It helps them reflect any concern the juror has and then
17 on the other hand, it gives us a chance to challenge
18 them on voir dire.

19 So those are my two concerns, and I just want the
20 questionnaire to be useful to both of us, and that's the
21 only reason you send one out. I don't think you send it
22 out to actually voir dire the jury. You just want it to
23 be useful to the Court and to both parties.

24 **BY THE COURT:** Okay, on the question, on the
25 race question, I think that is a different question than
26 was submitted to me before. In its generic form, I
27 think that is proper, and I will do that if y'all will
28 write that out for me in that form that you did.

29 Okay, on the other question, on the death penalty

1 question, you know, the questionnaire is so that y'all
2 can have an idea what these folks' opinions are. It's
3 not, as we all know, it's not a substitution for voir
4 dire and should not be. It is just so you can get an
5 idea who is feeling what so you know where to go. In
6 that regard, I really think that the multiple choice
7 that they use in Hinds County is probably a pretty good
8 way to get that opinion, but I note that everybody is
9 not in agreement with that.

10 So my ruling is this. I will give that if y'all
11 agree to it. If not, I think if it's going to have
12 Witherspoon in it, it has got to have reverse
13 Witherspoon, and I will add that question to it, if we
14 do that.

15 BY MR. HORAN: Your Honor, as far as the race
16 thing, as I recall, when we had discussed this in Attala
17 County, that you had agreed to formulate a question that
18 not only touched on race, but asked the jurors whether
19 or not they had any biases against any groups at all,
20 and it was not basically--

21 BY THE COURT: --If y'all, y'all put your
22 heads together and come up with a question like that, it
23 will be fine. Y'all are not going to get a yes to
24 either one of those questions, so it doesn't matter.
25 Nobody is going to put that down in writing.

26 BY MR. LUMUMBA: Believe it or not--

27 BY THE COURT: --If they do, we will get rid of
28 them quick, okay.

29 BY MR. LUMUMBA: In Los Angeles a few people

1 actually put it down.

2 BY MR. EVANS: Is what the Court is proposing
3 if we agree, the only question that would be on there
4 about race would be the one where they would scale
5 whether they strongly agreed or--

6 **BY THE COURT:** On race?

7 BY MR. EVANS: On the death penalty.

8 **BY THE COURT:** Yeah. The one that they,
9 apparently they use that in Hinds County.

10 BY MR. EVANS: Have you got that question with
11 you?

12 **BY THE COURT:** Mr. Lumumba has got it. You
13 have got it, don't you?

14 BY MR. LUMUMBA: Yeah, I just read it off.
15 They are supposed to be trying to fax me the actual
16 question. I haven't went back in there, but I just read
17 it off.

18 BY MR. EVANS: Because I would like to look at
19 the form they actually use if we are going to attempt to
20 agree on something.

21 **BY THE COURT:** I really to tell you the truth
22 think it's a better approach to it than what we did
23 because this other is going to get into an attempt to me
24 going through voir dire. But I don't think, since there
25 is a reverse Witherspoon, I think you have got to give
26 both sides of it because he is entitled to know who
27 would automatically impose, inflict it just like the
28 other side was. So anyhow, I will let y'all work on
29 that. If not, I'm going to add that question.

1 Okay. I need those forms, if you will, before we
2 leave here today because I want to get-- in changing
3 this, I will have to change it at home and get it right
4 back to Ms. Parker so she will have it when the summons
5 go out.

6 BY MR. LUMUMBA: We will sit down with them.

7 **BY THE COURT:** Okay.

8 BY MR. LUMUMBA: We have several motions
9 here. We can, we have hearings on some of them. Maybe
10 one of the things that might be best to take one which
11 does not require a hearing first.

12 **BY THE COURT:** All right.

13 (Mr. Lumumba and Mr. Freelon confer briefly.)

14 BY MR. LUMUMBA: We submitted a motion today
15 in limine, and that was the other motion the Court has
16 up there.

17 **BY THE COURT:** I have got it.

18 BY MR. LUMUMBA: To exclude hearsay testimony
19 from various witnesses. One of the witnesses is Roxanne
20 Ballard. Now we do have a transcript, but, you know, if
21 the Court is not inclined to grant this motion based
22 upon what is in the transcript, then we would ask for a
23 hearing at a subsequent time which I see no reason why
24 it couldn't actually occur in Winona, closer to the
25 witnesses prior to the trial.

26 But the testimony of the daughter of the deceased,
27 Ms. Ballard, regarding the procedures at Tardy Furniture
28 store, I read the transcript. She basically testified
29 that she was familiar with the procedures. It was clear

1 that she didn't work there at the time, and I remember
2 from somebody's testimony that she hadn't worked there
3 for quite a while. But in her testimony she doesn't go
4 on to say when the last time she had worked there,
5 right. But now in all fairness, and I'm not absolutely
6 sure of this, but I'm not sure that counsel objected to
7 her testimony. I think they did at some point, but it
8 may have been after she had already testified.

9 But in any event, the problem with the testimony is
10 that it's absolutely, totally hearsay, and without
11 proper authentication that she has appropriate
12 familiarity with the procedures that she was testifying
13 to, and some of it is even hearsay even if she was
14 familiar with the procedures because she gave, she gave
15 questions; she answered questions and gave opinions
16 about things that she thought varied from the
17 procedure. In other words, you know, there was, you
18 know, she testified to the amounts of money that was
19 stated and the way that they listed their money. And in
20 one instances she gave, she said, well, this is supposed
21 to be bills or fives, but then it could have been tens.
22 You know, it could have been tens. You know, in other
23 words, and she may have even said they probably were
24 tens.

25 I think that if I'm not mistaken, the District
26 Attorney was trying to match the money which was
27 allegedly supposed to have been in the store that day
28 with the money that was supposed to have been found
29 somewhere in Defendant's closet; right. So, but and she

1 varied from what she said the form actually was supposed
2 to have said and gave an opinion on the fact that it
3 could have not been fives and ones. It could have been
4 tens. Now she varied one way or other, and I can't
5 remember. It had to do with fives, ones and tens. I
6 know that much.

7 Secondly, the problem I have-- and that is the
8 smaller issue. The bigger issue is that I don't think
9 that somebody can come in there and testify in a
10 critical case like this that somebody who was not
11 working at the store, doesn't know what the woman did
12 that particular day, and hadn't worked there in for a
13 while and say what the Tardy Furniture store procedure
14 was. And even if she can testify on procedure, she
15 can't testify on the money that would have been, that
16 was in the box at the store. Certainly, the money is
17 not the same every day, and certainly, the person that
18 writes out the figures is registering what was there at
19 that time.

20 Plus, we don't know what was deposited in the bank,
21 what was taken home or any of those things. So I think
22 that it's not a level subject to expertise. It's really
23 not a question really which is subject to some
24 recordation of procedures, business procedures. It's
25 not a business, it's not a business exception question.
26 And finally, it is an area where she was not even
27 sufficiently authenticated or qualified to be a person
28 who could even testify to whatever they normally did in
29 that policy.

1 And I would also point out this is a small store,
2 so like most small stores, things vary all the time.
3 It's not like it's in some big monstrosity or big huge
4 mega multi-national where they have bureaucrats which
5 perform the same procedures with regularity endlessly
6 and actually have paperwork. And that's really where
7 the exception comes in where you have got paperwork,
8 which is a business exception paperwork, and they
9 actually admit the paperwork which says, that says what
10 the deal is. It really also is not subject to
11 interpretation. So we would object to that testimony.

12 Secondly, all testimony except the testimony of
13 Doyle Simpson regarding Doyle Simpson's alleged report
14 that his weapon was stolen on July 16th, 1996. Now in
15 the first trial numerous people came in and started
16 talking about Doyle Simpson came in and reported this to
17 them. This is before Doyle Simpson even testified. So
18 nobody was challenging, could have been challenging his
19 statement that it was stolen at least at that point.

20 Now sometimes there is such a thing called a prior
21 consistent statement that can be used to rehabilitate a
22 witness if somebody tries to cross-examine him with a
23 conflicting statement. Like, for instance, if Doyle
24 Simpson comes in and says, "My gun was stolen"; I come
25 up with a statement saying, "Here, Doyle, you told me
26 yesterday that your gun was never stolen." Then you can
27 go back and get a statement that says yes, where he
28 reported his gun stolen which would rehabilitate him
29 from my impeachment. And that is called rehabilitation

1 by prior consistent statement.

2 But you can't just have people come in on total
3 hearsay and buffer Doyle Simpson's statement. That is,
4 all those are self-supporting statements, and I don't
5 think you can do it and they are hearsay. That is the
6 basic problem; they are hearsay. And they are offered
7 for the truth of the matter asserted therein.

8 The truth is they are trying to establish that
9 Doyle Simpson's gun was stolen. That is the issue. Any
10 other issue, unless we raise some question about
11 procedure, then that is not even an issue. The
12 procedure is not an issue unless we question it. So the
13 question is not, we are not raising a question about why
14 the police did what they did or why anybody did what
15 they did at that point in the process anyway. So the
16 question is only relevant to whether or not the gun was
17 stolen in this case.

18 In some cases like where you are trying to suppress
19 evidence, etc., etc., and I won't get into that, but
20 then, you know, you get the exception to the rule. The
21 police officer searched the car based upon Doyle
22 Simpson's statement that the gun was stolen. Well, you
23 have explained why the police officer did what he did.
24 That's an issue because somebody has raised the motion
25 to suppress, claimed that the police officer
26 participated inappropriate conduct. So therefore, it's
27 not offered to support a statement. It is offered in a
28 very relevant way to support his procedures.

29 Before the jury suppression of evidence is not even

1 an issue. They can't even consider that. Any kind of
2 suppression of evidence has to be determined by this
3 Court. So any issues about suppression of evidence are
4 absolutely irrelevant before that jury unless we open
5 the door in some kind of way, which certainly, I didn't
6 see happening in the first trial, and it probably won't
7 happen in this one. All the hearsay testimony by the
8 witnesses of the prosecution, and then we get a little
9 more specific again down in (4), and we say a statement
10 concerning Bertha Tardy, including but not limited to
11 her alleged statement that she intended to take money
12 out of Defendant's check; also included but not limited
13 to Tardy's last firing of the Defendant.

14 You can't-- I mean I think there is some witnesses
15 who were supposed to have witnessed the Defendant drop
16 some batteries. We don't have any problem with those
17 witnesses coming in and saying they saw the Defendant
18 drop some batteries if that's what they want to say.
19 But they can't come back and say that Bertha Tardy told
20 them that she was going to fire the Defendant and that
21 she didn't like the fact that the Defendant had dropped
22 them. She was going to take money out of the check. In
23 fact, there is a check from the Defendant-- I mean
24 written to the Defendant which actually cleared and is
25 found in the Tardy store which suggests that she
26 actually did give him his check.

27 But irrespective of all that, you know, they cannot
28 use hearsay statements of witnesses to establish these
29 propositions which was done repeatedly, sometimes with

1 objection, sometimes without objection at the last
2 trial. And we would, you know, we just challenge any
3 other inadmissible hearsay, but those are areas which we
4 were able to ascertain in the transcript where we think
5 that hearsay is extremely prejudicial. And even if the
6 Court after hearing everything, tries to strike it, it
7 becomes very difficult to strike the prejudice of that.

8 The only kind of exceptions to Bertha Tardy's
9 testimony that I am aware of - now the Court may be
10 aware of some others under the hearsay rule - if she
11 gave a dying declaration, and I don't think that is an
12 allegation here; if she would have made a statement in
13 some kind of excited utterance or things of that
14 nature. None of those things are presented as the way
15 that these things occurred. I mean, you know, I'm going
16 to take money out of somebody's check because they
17 dropped batteries, and it is going to be so much money.
18 That seems a pretty deliberate statement. That is not
19 an excited utterance, and there was never anything
20 presented to show that she was excited, that she was,
21 you know, in any particular kind of way.

22 So those are the things that we would challenge in
23 our motion to exclude evidence in limine.

24 BY MR. HORAN: Your Honor, as you are aware,
25 Roxanne Ballard did testify as to certain procedures
26 that went on inside the store, and prior to her
27 testifying about those procedures, she testified about
28 her knowledge as to what went on. And I believe under
29 the routine and habit, routine and habit rule that is

1 in-- I don't have my rule book with me -- she could
2 testify to those things. She had sufficient knowledge
3 as to what went on inside the store. Assuming that we
4 would have to go through all that at trial, we are
5 certainly prepared to do that.

6 All of these particular points that Counsel for the
7 Defendant has brought up I think right now are
8 premature. We would have to lay the predicate to get
9 that statement in from her, her testimony about the
10 bookkeeping, about the records that were regularly kept
11 in the business, about the money that they started out
12 with every day.

13 And there is a case, I believe it's Simon v. State,
14 which touches on this. It states that when you have a
15 situation where-- and in that case there was a house
16 that was broken into; four people killed and the house
17 burned down subsequent to their death. The Supreme
18 Court said that a family member could certainly come in
19 and testify that it was that person's routine practice
20 or their habit to lock their door when they left or when
21 they went to bed. There was no proof that the door was
22 locked because the house was burned down, but they
23 certainly said in that particular case that it was
24 certainly proper for a family member to testify to that
25 if they had sufficient knowledge of that particular
26 person's routine or their habit.

27 But nonetheless, like I said, all this is premature
28 at this particular point as to that and as to Roxanne
29 Ballard's testimony about routine habit and practice of

1 the people at the Tardy Furniture store.

2 As far as the testimony about Doyle Simpson, the
3 Court ruled that that was relevant at some point in time
4 during the trial. We laid a proper predicate to get
5 certain statements in regarding the time frame in which
6 it was reported that the gun was stolen; it became
7 relevant. At that point in time it was an issue in the
8 trial, and again, these motions are premature. There
9 are certain hearsay exceptions that would allow this
10 testimony in. I'm not going to go into that right now,
11 but the Court is certainly aware of that, and the Court
12 allowed it last time.

13 And as to paragraph four of the motion in limine,
14 my only recollection of any statements that were made by
15 Bertha Tardy came from the statements that were taken
16 from the Defendant at the time that he was interrogated
17 by law enforcement officers. Those statements came in.
18 If there was anybody that testified about anything that
19 she said about firing the Defendant or anything like
20 that, I don't recall it. If it's in the transcript, I
21 don't recall, and I have conferred with Mr. Evans.

22 But nonetheless, Your Honor, my point is on all
23 four of these points this is premature. These are
24 things that need to be addressed at trial. That is
25 another trial. We will have to lay the same predicates
26 that were required to get this either an exception to
27 the hearsay or convince the Court that it is not hearsay
28 on all these statements, and at this point in time there
29 is no reason to grant any motion in limine on these

1 particular statements.

2 **BY THE COURT:** Anything further?

3 BY MR. LUMUMBA: Judge, I think that that may,
4 in fact, be true if we didn't already have a transcript
5 where these items have already occurred. So I'm saying
6 based upon these transcripts, these things should be
7 excluded at this time, hearsay statements. Now the
8 Court can always allow statements if a proper exception
9 comes up, if we open the door. But there is no
10 exception to Roxanne Ballard's testimony. There is no
11 exception to Doyle Simpson's alleged stealing of the
12 weapon-- I mean on the loss, on losing of the weapon or
13 having one stolen and the hearsay nature of that based
14 upon what we know. And I believe there were other
15 witnesses who made statements about Ms. Tardy and her
16 situation.

17 I do not claim that if the Defendant talked about
18 what she told him, that that is-- well, let me think.
19 That may be because there is a thing called hearsay on
20 top of hearsay. Defendant's statement, his own
21 statement is admissible. I'm not sure whether his
22 statement about what somebody else said is admissible if
23 what somebody else says is itself hearsay.

24 **BY THE COURT:** Well, I don't know that we got
25 that deep into it last time.

26 BY MR. LUMUMBA: Well, I'm not-- actually
27 there is a thing called hearsay on hearsay. And I think
28 for somebody else to read the Defendant's statement
29 about what somebody else said, I think is hearsay. Now

1 if you ask the Defendant himself, I think that is
2 hearsay. That is hearsay. The Defendant couldn't get
3 on the stand and testify to what Ms. Tardy said. He
4 couldn't do it. I mean unless there was some exception
5 because if the Defendant got on the stand to testify
6 what Ms. Tardy said, then what she said would clearly be
7 hearsay unless you have got an exception to it.

8 **BY THE COURT:** Well, there might be an
9 exception to that. If she came up to him and said, I'm
10 firing you; his present sense impression may have been--
11 I don't know. We are getting too involved in that. We
12 will get to that down the road.

13 BY MR. LUMUMBA: Okay, thank you.

14 BY MR. HORAN: I have nothing further, Your
15 Honor.

16 **BY THE COURT:** I have ruled on-- first, let me
17 say as far as allowing inadmissible hearsay, I'm going
18 to do the best I can not to do that. So I guess to that
19 extent, the Motion would be sustained. But these other
20 matters I have ruled on, and I think those rulings were
21 correct on facts as they were presented to me at that
22 time. So, but this is another trial, and it will have
23 to be presented again, and if they are not presented
24 correctly, then I may make a different ruling. I am
25 willing to do those things outside the presence of the
26 jury at the time of your objection. So I overrule that
27 Motion at this time.

28 Now have y'all got some evidence and stuff to put
29 on in some of these other motions?

1 BY MR. LUMUMBA: We have a Motion to Suppress
2 Eye Witness Identification.

3 BY THE COURT: Okay, well, let's break until--
4 how long do you think that is going to take, Mr.
5 Lumumba?

6 BY MR. LUMUMBA: Counsel tells me it is going
7 to take 30 minutes.

8 BY THE COURT: Okay, why don't we break until
9 1:30, and in that time between 1:00 and 1:30, maybe
10 y'all can get together on your questions on the
11 questionnaire. Maybe you can get that thing faxed to
12 you, and then we will proceed and we will finish up.
13 Court is adjourned until 1:30.

14 (FOLLOWING THE NOON RECESS ON JANUARY 6, 1999,
15 MOTION PROCEEDINGS CONTINUED IN OPEN COURT WITH THE
16 COURT, ALL COUNSEL, AND THE DEFENDANT BEING PRESENT:)

17 BY THE COURT: What did y'all decide about
18 your questionnaire?

19 BY MR. LUMUMBA: I didn't see them during
20 lunch. We were here, but apparently, they went out to
21 lunch. I just gave them the questions that I suggest.
22 He wanted to see the one actually from Hinds County. I
23 called, my secretary called the Public Defender's Office
24 in Hinds County, and they said they were going to fax
25 it, and apparently it hasn't been faxed yet.

26 BY THE COURT: Okay.

27 BY MR. LUMUMBA: She is checking back. So we
28 can proceed with the hearing if you would like.

29 BY THE COURT: We will do that, and then we

1 will get, we will do something on that before we leave
2 today.

3 BY MR. LUMUMBA: Okay.

4 BY THE COURT: I want to be in a position
5 where I can at least mail her the questionnaire by the
6 first of the week.

7 BY MR. LUMUMBA: Okay. Our first, we are
8 going to proceed on-- our first witness is going to be--

9 BY THE COURT: Which motion is this that you
10 are going to call up? The Motion to Suppress
11 Identification?

12 BY MR. LUMUMBA: Identification, yes.

13 BY THE COURT: Okay.

14 BY MR. LUMUMBA: Our witness would be Mr.
15 Collins, Mr. Porky Collins.

16 BY THE COURT: Okay. Do you want to call all
17 the witnesses around that we are going to have on this
18 and let me swear them now? Somebody may want the rule
19 invoked.

20 BY MR. LUMUMBA: Okay, yeah. The witnesses we
21 intend to call are Mr. Collins and the officers who were
22 present at the time that he made an identification.
23 Matthews, Mr. John Johnson, and one other gentleman.
24 Matthews and Miller.

25 BY THE COURT: Okay. Where are they?

26 (Some witnesses came into the courtroom.)

27 BY THE COURT: I need one more and then we
28 will be ready. (Pause) Let's go ahead and swear y'all,
29 and we will swear Mr. Johnson when the time comes.

1 (Witnesses sworn by the Court.)

2 **BY THE COURT:** All right. Mr. Collins, if you
3 will have a seat up here. You two gentlemen, I will ask
4 y'all to step outside, and if Mr. Johnson is out there,
5 y'all just tell him to wait, don't come in the
6 courtroom.

7 **CHARLES "PORKY" COLLINS,**
8 upon being called to testify as a witness by the Defendant on
9 the Motion to Suppress Identification, having first been duly
10 sworn, testified as follows, to-wit:

11 DIRECT EXAMINATION BY MR. LUMUMBA:

12 Q. I believe they call you Porky Collins; is that
13 correct?

14 A. That's correct.

15 **BY THE COURT:** That was my fault. First state
16 your name for the record, please, sir.

17 **BY THE WITNESS:** Charles Collins.

18 **BY THE COURT:** Okay, now.

19 **BY MR. LUMUMBA:**

20 Q. Charles Collins; is that correct?

21 A. Uh-hum.

22 Q. But they call you Porky sometimes?

23 A. That's right.

24 Q. And Mr. Collins, if I'm not mistaken, you appeared
25 as a witness in this case at a trial which occurred some time
26 ago in Tupelo, Mississippi; is that correct?

27 A. That's correct.

28 Q. And you testified at that time concerning an
29 identification that you had made; is that correct? Or you--

1 well, let me strike that. You testified at that time with
2 respect to some observations that you said that you had made;
3 is that correct?

4 A. I don't understand what you are talking about.

5 Q. Did you testify at that time concerning
6 observations that you said you made on July the 16th, 1996,
7 around and about the Tardy grocery-- Tardy Furniture store?

8 A. That's correct.

9 Q. And would it be safe to say, Mr. Collins, that when
10 you testified, you had indicated that you had on that day
11 gone downtown; is that correct?

12 A. That's correct. I had several places to go
13 downtown.

14 Q. Yeah, and in fact, you have indicated that you went
15 downtown to go to the cleaners; is that correct?

16 A. That was one of the places; that is correct.

17 Q. But you never really went to the cleaners; is that
18 correct?

19 A. That's correct. Not at that time, no.

20 Q. In fact, you went downtown several times to go to
21 the cleaners--

22 BY MR. EVANS: --Your Honor, I object. This
23 motion is strictly on one thing, and that is
24 identification.

25 BY MR. LUMUMBA: Okay.

26 BY THE COURT: Well, I will let him lay a
27 predicate.

28 BY MR. LUMUMBA:

29 Q. Okay, all right. You testified that you went

1 downtown on at least two different occasions to go to the
2 cleaners; is that correct?

3 A. That's correct.

4 Q. Did you go two or three different times?

5 A. I went three times.

6 Q. Okay, and at no point did you wind up at the
7 cleaners; is that correct?

8 A. No. The third time I couldn't go get to the
9 cleaners.

10 Q. Okay, well, at no point did you get there the two
11 times before the third time; right?

12 A. No, I did not.

13 Q. And would it be safe to say that you also testified
14 that you had gone downtown to go to the bank; is that
15 correct?

16 A. That's correct.

17 Q. And you never got to the bank?

18 A. No, I did not because after this happened, they
19 closed the bank.

20 Q. I see. Okay, now and I think that you testified on
21 this day in question that at some point you went downtown,
22 and you saw a Miss, a lady who you knew that worked at
23 Tardy's; is that correct?

24 A. Carmen Rigby; that's right.

25 Q. Okay, and I think that you at some point followed
26 her from the post office to an area where you saw her going
27 into Tardy's; is that correct?

28 A. I followed her from the post office. We got into a
29 conversation in the post office. We followed, we walked out

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 talking to her car. She got in her car, and I pulled out
2 behind her going to-- she was going down Summit Street, and
3 she went to Tardy's. Yes, I was right behind her, and she
4 waved at me as she went through the door.

5 Q. Okay, you saw her at the post office at eight-- you
6 said around about 9 o'clock, did you?

7 A. There was a postal money order that I got at the
8 post office. They have got the correct time on it, and
9 that's when I saw her.

10 Q. Okay, was that--

11 A. --It was around 9 o'clock though.

12 Q. Okay. And did you also indicate or do you indicate
13 now that you actually saw her going into Tardy's around about
14 9:15?

15 BY MR. EVANS: Your Honor, again I object.
16 This is not a preliminary hearing or a discovery
17 hearing. This is a motion on identification only.
18 He is attempting to go through his entire
19 testimony, and that is improper on this motion.

20 BY THE COURT: Well, it may be, but I need my
21 memory refreshed as to what went on so I can get
22 the context of what we are talking about. So I'm
23 going to allow him to testify to it as long as you
24 don't drag it out, Mr. Lumumba.

25 BY MR. LUMUMBA: No, I am getting right to it.

26 BY MR. LUMUMBA:

27 Q. About 9:15, I think, is when you said you saw her
28 proceed into--

29 A. --I didn't say what time it was. I said it was

1 ever how long it took me and her to go from the post office
2 to the car and talk about two or three or four minutes, and
3 then ever how long it took her to go down there; that's when
4 I seen her go in. I never did give a time.

5 Q. Well, in any event once you saw her go in, I think
6 that you indicated that at that time you went back; you left
7 downtown. Is that correct?

8 A. That's right. I went to the cleaners, and there
9 was a lot of cars parked around the cleaners, and I can't
10 walk very far. I am handicapped. And what I had to get from
11 the cleaners was of no pressure. I mean I could have gotten
12 it any time. My wife just told me, she give me one of these
13 "honey do" lists of what to do that day, and that's what I
14 was doing.

15 Q. I see. But you didn't get into the cleaners?

16 A. Not at that time, I did not.

17 Q. I see. And in fact, you intended to go to the
18 cleaners, but you didn't because it was too many cars?

19 A. That's right.

20 Q. Okay. So you went back home?

21 A. I started back home, yes.

22 Q. All right, and--

23 A. I didn't go back home at that time.

24 Q. All right, and where did you go?

25 A. I went and paid my gas bill.

26 Q. Okay, then did you go home?

27 A. No, I did not. I was on my way home, and I got a
28 phone call. My wife called me on the car phone. I had
29 brought my other car down to a mechanic to have some plugs

1 and plug wires put on it. And I had picked up the wrong
2 plugs, and my wife called me and told me I had got the wrong
3 plugs. So I rode three or four miles south of Winona to Don
4 Mitchell's repair shop, picked up those plugs, and went to
5 Wal-Mart and swapped them and brought them back to Don
6 Mitchell's repair shop. Then I went home.

7 Q. Okay, let me just see. You got a call indicating
8 that Don Mitchell said he had the wrong plugs?

9 A. That's right.

10 Q. So you went all the way to Don Mitchell's; right?

11 A. That's right.

12 Q. And got the plugs he had?

13 A. Uh-hum.

14 Q. Then you went all the way back to the--

15 A. To Wal-Mart.

16 Q. --to Wal-Mart and swapped the plugs, or you got the
17 plugs you needed?

18 A. Got the right plugs; that's right.

19 Q. And then you went all the way back to Don
20 Mitchell's?

21 A. That's right. And they have got a copy of the
22 receipt from Wal-Mart. It'll tell you what time that was.

23 Q. Okay. And then after you went to Don Mitchell's
24 for the second time-- well, actually that was the third time
25 you had been to Don Mitchell's that day; right?

26 A. No, the second time.

27 Q. Hadn't you gone earlier that day to drop off your
28 car?

29 A. That's right. Went earlier that day-- well, the

1 third time; that's right. I went and picked them up; that's
2 right, the third time, yeah.

3 Q. Okay, and then after that, you went back to your
4 home?

5 A. That's right.

6 Q. Okay. Then at your home then you left again going
7 back to get the clothes; is that correct?

8 A. That's exactly right. I had left the money at home
9 for the clothes. The clothes was for my son, and he had left
10 the money there.

11 Q. Okay, you left--

12 A. --And I went back by there and got the money for
13 the clothes, and I went back to the cleaners, yes, sir.

14 Q. Okay. Well, so you had also forgotten the money
15 for the cleaners when you went downtown the first time;
16 right?

17 A. That's right. My wife told me-- it was laying on
18 the cabinet inside the house. I was at my wife's shop when
19 she give me the rest of the stuff, and she said go in there
20 and pick that stuff up. And I walked out of her shop, and I
21 was talking to a man outside the shop, and I forgot to get
22 the money.

23 Q. Okay, I see. So now, so without going into great
24 detail, it would be safe to say you really forgot to do, you
25 forgot quite a few things that day; is that correct?

26 A. I don't hardly think so.

27 Q. Okay. Well, you forgot to go to the cleaners. You
28 forgot to get the money for the cleaners?

29 A. Uh-huh.

1 Q. Isn't that right?

2 A. I forgot to get the money for the cleaners, but
3 that is nothing unusual. I imagine everybody does that.

4 Q. I see. Weren't you having some problems with your
5 memory because of some medication that you were on?

6 A. I take a lot of medication.

7 Q. Were you taking medication at that time?

8 A. I was taking medication at that time. I am taking
9 medication today.

10 Q. Okay, and medication affects your memory?

11 A. Well, I couldn't hardly say. I don't know how you
12 could-- a lot of times-- no, I wouldn't say it affects my
13 memory.

14 Q. Okay. One second here.

15 A. At the particular time I am taking that medicine at
16 times, but I hadn't just taken that medicine.

17 Q. Well, you testified at this point that you were
18 taking the medication at the time; isn't that correct?

19 A. I take the medication every day.

20 Q. One second. (Pause) Okay, we will come back to
21 the medication issue, and I will ask counsel to remind me to
22 come back to it. Okay, now it would be safe to say, Mr.
23 Collins, when you came back downtown the second time, this is
24 after you had gone to the Don Richards--

25 A. Don Mitchell.

26 Q. Don Mitchell, I'm sorry, on three different
27 occasions. This is after that; right. And this is after you
28 had come from Wal-Mart.

29 A. Uh-hum.

1 Q. And you went to Don Mitchell's once-- well,
2 actually twice before you went to Wal-Mart's and once after
3 you went to Wal-Mart?

4 A. That's correct.

5 Q. Right, okay. And you had gone by your house to get
6 the money that you had forgotten?

7 A. That's correct.

8 Q. You went back downtown, and at the time you got
9 back downtown, what street did you turn on?

10 A. Went down Summit Street and turned south on Main
11 Street.

12 Q. Is Summit Street the street that the bank is on?

13 A. That's right.

14 Q. Did you go to the bank at that time?

15 A. No, I did not because when I came to town, I came
16 up Church Street and turned down Summit Street.

17 Q. Okay. Did you stop anywhere else before you got in
18 the area of Tardy Grocery store-- Tardy Furniture store?

19 A. No, I did not.

20 Q. Okay, and when you came into the area of Tardy
21 Furniture store, you were just going down the street there,
22 and I think that you have indicated before that you saw a
23 couple of people; is that correct?

24 A. That's right, correct.

25 Q. Okay, now you have been down that street many
26 times; isn't that correct?

27 A. Well, I have lived there all my life; yeah.

28 Q. Okay, these people that you saw, you didn't see any
29 guns; right?

1 A. Why no.

2 Q. Okay, you didn't see anybody hitting anybody or any
3 physical, anybody physically--

4 BY MR. EVANS: --Your Honor, again I'm going
5 to object. This hearing, this motion that we have
6 been noticed for is on one issue, and that is his
7 identification in the lineup of this Defendant.
8 That is the only thing he has filed a motion on,
9 and we are going through his entire testimony which
10 is ridiculous.

11 BY MR. LUMUMBA: Judge--

12 **BY THE COURT:** Of course, part of his
13 identification is what it was, is what was the
14 basis he used to identify the person. I think it
15 is highly relevant. I'm going to allow him to go
16 into it.

17 BY MR. LUMUMBA:

18 Q. Okay, you didn't see anybody pointing a gun at
19 anybody or anything like that?

20 A. No, I did not.

21 Q. You didn't see anybody hit anybody or anything like
22 that?

23 A. No, I did not. I never would have noticed them if
24 it hadn't have been for the motions they was making, that one
25 of them was making with his hands. I would have never
26 noticed them.

27 Q. Okay, so a person was making motions with his
28 hands?

29 A. Yeah, looked like they were arguing.

1 Q. And that was the only-- but you don't know that
2 they were arguing, do you?

3 A. No, I do not. I just told you the only thing that
4 made me notice them was the motion of their hands.

5 Q. Okay, now what--

6 A. --one of them's hands. It wasn't but one of them
7 doing it.

8 Q. Only one person was doing it?

9 A. That's right.

10 Q. And it would be safe to say you have seen people
11 move their hands in various different ways at various
12 different times; right?

13 A. Not just like this, no.

14 Q. Well, it was the first time you ever saw anybody
15 move their hands--

16 A. --No, that is not what I said. Not like this. It
17 looked like they were arguing to me.

18 Q. Okay, but you have actually seen people argue many
19 times?

20 A. Oh, sure, I have, yeah.

21 Q. Okay.

22 A. That's the reason I said that.

23 Q. Okay, but that was not-- I mean that drew your
24 attention?

25 A. That's right. That's what drew my attention to
26 them. I probably never would have seen them if it hadn't
27 been for that.

28 Q. I understand, but that wasn't like, seeing somebody
29 argue wasn't like an exciting event for you or anything like

1 that, was it?

2 A. No, but that's what made me notice them.

3 Q. I understand that, and I'm not taking that away
4 from you. But that's what drew your attention?

5 A. That's right.

6 Q. Okay, and you notice people on the street for
7 various different reasons; right?

8 A. Yeah, and that's why I may have seen a whole bunch
9 of people that day I never noticed because, you know.

10 Q. I understand. But my only question at this point
11 so I can go to the next question is that seeing somebody who
12 you thought may have been arguing was not an exciting event
13 for you?

14 A. No, it just made me notice them.

15 Q. Okay. And actually all you did was glimpse in that
16 direction; is that correct?

17 A. That's correct.

18 Q. And you only got a glimpse of one man; is that
19 correct?

20 A. That's correct.

21 Q. The other person, you didn't even see his face?

22 A. No, I did not.

23 Q. Okay. And it would be safe to say that you only
24 got a glimpse on one occasion. That was as you were passing
25 them going south; is that correct?

26 A. That's correct.

27 Q. You then turned around and went north, and you
28 didn't see that person's face at all?

29 A. No, I did not.

1 Q. Okay, and it would be safe to say, would it not,
2 that at least as far-- and you had no reason to believe that
3 that person that you got that glimpse of was somebody that
4 was doing anything wrong? You had no reason to believe that?

5 A. No, I did not.

6 Q. Okay, you had no reason to believe-- in fact, you
7 don't know; you never did see that person do anything wrong;
8 isn't that correct?

9 A. No, I did not.

10 Q. And you had never seen in your life before that
11 person that you got this brief glimpse at; isn't that
12 correct?

13 A. Not that I know of. As far as I know, I had not.

14 Q. Okay. And it would be safe to say, would it not,
15 that on your way back coming south-- I mean going north; you
16 were going north as you were coming; right?

17 A. That's correct.

18 Q. So that was about the second time you were going to
19 that cleaners; right?

20 A. That's correct.

21 Q. You didn't go in that time either?

22 A. No. The reason I didn't, I made the circle because
23 I was going to look and see what was going on.

24 Q. I see. So you made the circle, and then you just
25 saw two people walking away from the car; right?

26 A. That's right.

27 Q. Doing nothing; nothing eventful?

28 A. That's right.

29 Q. Nothing fantastic?

1 A. They was headed across the street.

2 Q. Right, and walking actually toward the side of the
3 street where Tardy's was; right?

4 A. That's correct.

5 Q. But actually walking away from Tardy's; right?

6 A. That's correct.

7 Q. And also walking away from the car; is that
8 correct?

9 A. That's correct.

10 Q. So that wasn't exciting to you, was it?

11 A. No.

12 Q. Okay so nothing-- you really, you didn't see any
13 faces; right?

14 A. That's correct.

15 Q. So nothing fantastic about that?

16 A. I seen one. I just got a glimpse of one man's
17 face; that's all.

18 Q. I mean you got that the first time?

19 A. That's the first time.

20 Q. You didn't get that the second time?

21 A. No, I did not.

22 Q. So the second time you didn't get anything that
23 excited you in any kind of way?

24 A. No, I did not.

25 Q. Nothing that even drew your attention really the
26 second time; right?

27 A. That's correct.

28 Q. Okay. And so once you did that, did you remember
29 to go back to the cleaners?

1 A. I didn't go back to the cleaners then.

2 Q. All right, sir. Okay, now let me ask you this.
3 You at some point, and that's the only thing that you saw
4 that day concerning the two people that you have shared with
5 us here today; is that correct?

6 A. That's correct.

7 Q. And it would be safe to say that you never saw in
8 person-- well, let me ask you this. At some point you talked
9 to the police; is that correct?

10 A. It was after all this happened, yeah.

11 Q. Yeah, and it would be safe to say this was-- you
12 gave the police a description of the two black men; is that
13 correct?

14 A. Yes, I did.

15 Q. Okay. And the only thing you were able to tell
16 them-- you told them all you could tell them; isn't that
17 correct?

18 A. That's right.

19 Q. You didn't leave anything out?

20 A. I wouldn't hardly think so.

21 Q. Okay. And the only thing you were able to tell
22 them about these two black men is that they were two black
23 men with medium complexion; isn't that correct?

24 A. I don't think I ever said that. I told them they
25 had the complexion of Johnny Hargrove's because he was
26 sitting there. I don't think I ever said anything about
27 medium complexion, but that may be where that come from.

28 Q. Oh, I see. So you pointed to Mr. Hargrove; is that
29 right?

1 A. That's right.

2 Q. And you say, and Mr. Hargrove is the police chief?

3 A. That's right.

4 Q. He is a black man?

5 A. That's right.

6 Q. And so you don't remember saying two black men,
7 medium complexion?

8 A. I don't remember saying that. I told them he had
9 the complexion of Mr. Hargrove sitting there.

10 Q. Let me ask you this. Are you denying that you said
11 that, or you just don't remember, and I'm not trying to put
12 words in your mouth. Are you denying that you actually said
13 medium complexion, or are you saying you didn't, or you just
14 don't remember?

15 A. I don't think I said it.

16 Q. Okay. You don't think you said it. I'm not trying
17 to get picky with you, but we need to know for the record.
18 You don't think you said it, but could you have said it? I
19 guess that's my question.

20 A. I guess I could have, but I said he had a
21 complexion like Mr. Hargrove's. I think that's all I said,
22 but I mean I could have said it.

23 Q. Okay, is Mr. Hargrove to you a black man of medium
24 complexion?

25 A. That's right.

26 Q. Okay, now one second.

27 (Pause while Defense Counsel confer.)

28 Q. Okay, but in any event you remember saying that
29 there were two black men of medium complexion. You remember

1 two black men who had a complexion like Mr. Hargrove. That's
2 what you remember saying; right?

3 A. That's correct. Well, I said he looked like Mr.
4 Hargrove. Yeah, that's correct.

5 Q. Well, now let me ask you this. You didn't see
6 either one of these people that you got the glimpse at again
7 that day as far as you know; right?

8 A. As far as I know I didn't.

9 Q. You didn't see-- the police didn't show you any
10 pictures of anybody that day, did you?

11 A. No, they did not.

12 Q. And in fact, the police didn't show you any
13 pictures until sometime about August the 24th of 1996; is
14 that correct?

15 A. I don't know what date it was.

16 Q. You know it was over a month later?

17 A. I couldn't tell you that. It was some time had
18 passed. I couldn't tell you how long it had been.

19 Q. Okay, you don't know but you know a lot of time
20 had--

21 A. Some time had passed, yeah.

22 Q. Okay, all right. You wouldn't-- now just listen to
23 the question carefully. If I was to say that it was on
24 August the 24th or somebody else was to testify to that, you
25 wouldn't take issue with that? You wouldn't deny that, would
26 you?

27 A. No, because it was several, it was a time lapse
28 there. I couldn't say it was or it wasn't.

29 Q. Okay, I understand. I'm not trying to nail you

1 down, but I just wanted to make sure that that is something
2 that you didn't disagree with, and you wouldn't disagree.
3 You just wouldn't know for sure?

4 A. That's right.

5 Q. Okay. Now would it also be true that when you saw
6 these pictures, you had not seen as far as you know this
7 person -- I am focusing now on this person that you got this
8 glimpse at; right?

9 A. Right, okay.

10 Q. A person you had never seen before in your life;
11 right?

12 A. Uh-huh.

13 Q. A person you had only seen when you were moving
14 down the street driving; right?

15 A. Okay.

16 Q. A person you couldn't see his face when you came
17 back; right?

18 A. Right.

19 Q. You never saw that person when you got this brief
20 glimpse at again prior to the time that you saw the pictures
21 as far as you know; is that correct?

22 A. As far as I know.

23 Q. And so when you looked at those pictures, your
24 identification, you were looking, you were basing, when you
25 looked at the pictures, on nothing but this brief glimpse
26 that you got at this person for the first time in your life
27 as far as you know?

28 A. That's correct.

29 Q. Okay. Now would it be safe to say also--

1 (Pause while Mr. Lumumba confers with Mr.
2 Evans.)

3 BY MR. LUMUMBA: Could I see that?

4 BY MR. EVANS: I don't know that I want this
5 one introduced into evidence today.

6 BY MR. LUMUMBA: Judge, my problem here is we
7 never got a copy of the actual pictures. We just
8 got a xeroxed copy. They have a much better copy
9 than I have. They are concerned about their copy
10 being introduced into evidence. I'm not concerned
11 about marking it up or whatever. I just want to
12 use it, and if they want to introduce this in
13 evidence and let me use that to show you and the
14 witness, I have no problem.

15 BY THE COURT: Let me see what you have got.

16 BY MR. EVANS: I have no problem with doing
17 that, Your Honor, but this is his motion. He
18 should have had the Supreme Court petitioned for
19 the original. This is a copy which I do not want
20 marked up because it's the only copy we have got.
21 And if we don't get the one back from the Supreme
22 Court, that's the one we will have to use in the
23 trial.

24 BY THE COURT: How about this? You will agree
25 that that copy he has got is a copy of this?

26 BY MR. EVANS: Yes, sir.

27 BY THE COURT: Okay. I'm going to let him
28 look at this and testify from this, but if you want
29 to introduce anything, it'll have to be that copy.

1 Well, I'm going to allow this or something like
2 this to go to the Supreme Court if that becomes
3 necessary. The original will have to go. At this
4 point in time I don't want it marked up as far as
5 evidence goes. We will put this in for that
6 purpose. My ruling is that if it is necessary that
7 this record go to the Supreme Court, that this go
8 or the original to this go.

9 BY MR. EVANS: We can stipulate that the copy
10 that he has got is a true and correct copy of it
11 and introduce that one as far as the Motion as far
12 as I am concerned and use this one just for
13 demonstration purposes.

14 BY THE COURT: Right, but I think if it goes,
15 I think the originals are better evidence for what
16 this is about than the copies are. So if it goes--
17 I have looked at the original. He is going to look
18 at the originals. If it goes to the Supreme Court,
19 they need to look at the originals rather than a
20 copy. So my ruling is I will grant your objection
21 to this point, but if it comes down to it-- unless
22 they already have this.

23 BY MR. EVANS: They have got the original.

24 BY THE COURT: Okay, well, if they--

25 BY MR. LUMUMBA: Who?

26 BY THE COURT: The Supreme Court.

27 BY MR. LUMUMBA: Okay.

28 BY THE COURT: If they have got the originals,
29 then we won't have to even do that. But for the

1 purposes of this hearing, I want to use it where he
2 can see. Let the record reflect that Mr. Lumumba
3 is going to show the witness the original lineup
4 pictures. There are six of them; is that correct?

5 BY MR. LUMUMBA: That's correct.

6 **BY THE COURT:** Okay, they will not be, this
7 particular document will not be marked into
8 evidence. There will be a true and correct copy
9 entered into evidence for the purpose of this
10 hearing. If necessary, the originals will go to
11 the Supreme Court.

12 BY MR. LUMUMBA: Can we have another copy?

13 BY MR. EVANS: You have got it. How many do
14 you want?

15 BY MR. LUMUMBA: He was shown two photographic
16 displays that day and picked people out of both of
17 them. I would like to be able to show him both if
18 I can.

19 BY MR. EVANS: Petition the Supreme Court and
20 get it. That's the one I have got here.

21 **BY THE COURT:** Wait a minute; wait a minute.

22 BY MR. LUMUMBA: You don't have the other
23 copy?

24 BY MR. EVANS: No, I don't. It's in the
25 Supreme Court.

26 BY MR. LUMUMBA: Isn't that it?

27 BY MR. EVANS: No, that's the same thing you
28 are holding in your hand.

29 BY MR. LUMUMBA: Okay, I'm sorry. Okay.

1 Thank you. That was all that question.

2 BY MR. LUMUMBA:

3 Q. Now you recall, don't you, Mr. Collins, that you
4 showed, you were shown two different sets of photos; is that
5 correct?

6 A. I was shown some photos. I think it was two sets.
7 It may have been; I don't know.

8 Q. And it would be safe to say that when you were
9 shown the first set of photos, you pointed to one or two
10 different persons in that array; isn't that correct?

11 A. I remember saying one of them looked like him. I
12 don't remember pointing to two. I remember saying one of
13 them may have, looked like him.

14 Q. What you remember is that the first set of photos
15 that you looked at you said that one of the people looked
16 like the person; is that correct?

17 A. I don't remember exactly what I said. I am trying
18 to remember exactly what I said.

19 BY MR. EVANS: Your Honor, if he is going to
20 ask him questions about different documents, I
21 would like for him to be shown these documents and
22 asked about specific documents.

23 BY MR. LUMUMBA: Judge, let me say this.
24 First of all, the documents that we have are
25 documents where the police officers took notes in
26 their own hands. There is no reason why he should
27 need those to testify as to what he remembers.

28 BY MR. EVANS: He specifically--

29 BY THE COURT: --Wait a minute; wait a minute,

1 Mr. Evans. One at a time.

2 BY MR. LUMUMBA: That is my comment.

3 **BY THE COURT:** Okay, Mr. Evans--

4 BY MR. LUMUMBA: So there is no reason why he
5 should need the police officers' documents. I want
6 to see what he said, not what the police officers
7 say he said.

8 BY MR. EVANS: Your Honor, he is making
9 reference with this witness to two different
10 lineups. He is attempting to confuse him. If he
11 wants to ask him about each lineup, I ask that he
12 show him the lineups and ask him specific questions
13 about each lineup so that he knows which one he is
14 talking about.

15 **BY THE COURT:** The objection is overruled.

16 BY MR. LUMUMBA: Okay.

17 BY MR. LUMUMBA:

18 Q. Now, Mr. Collins, you realize that you were shown
19 two different lineups. Now I want you to do the best you
20 can. Now if you can't remember something, just tell me. I
21 don't have any problem with that; you understand? Okay?

22 A. Yeah, I understand what you are talking about.

23 Q. And okay, now the first lineup, I want you to focus
24 on the first one you were shown. Now by the way, were you
25 ever shown color photos, or were all the photos you saw black
26 and white?

27 A. Some of them were black and white, and the best I
28 can remember some of them... (Pause) They were, some of them
29 were colored, I think.

1 Q. All right, so some of them were black and white?

2 A. Uh-hum.

3 Q. Now the, were-- in the first lineup, first group of
4 pictures you saw, how many was it? About 6, if you can--

5 A. --I would say so. I don't remember exactly how
6 many was in there.

7 Q. Okay. Were all the pictures shown at that time
8 black and white, or were some of those in colors, or do you
9 remember?

10 A. If I'm not mistaken, I believe they were all black
11 and white; I'm not sure. I believe they were all black and
12 white.

13 Q. When you pointed to somebody and said something
14 about them-- strike that for a moment. Let me just ask you a
15 few questions about what you were told when you appeared
16 there. First of all, actually between the time that you
17 talked to the police on July the 16th when the, and the time
18 that you were pointing to different photos, you actually
19 talked to the police on several different days before you saw
20 any photos; isn't that correct?

21 A. Well, I talked to several different-- I talked to
22 the Sheriff's Department. I talked to the Police Department,
23 and I talked to the District Attorney's Office, yes.

24 Q. Okay, and you talked to the District Attorney's
25 Office on several different times before you actually were
26 shown any photos; isn't that correct?

27 A. I talked to them a couple of times. I don't
28 remember just how many times it was.

29 Q. A couple of times, okay. And then after a while,

1 not immediately, but after a while, you did get shown some
2 photos after some time as you have described it. Isn't that
3 correct?

4 A. Uh-hum. That's correct.

5 Q. And you believe that the first set you saw, if I'm
6 not mistaken, I think you just told me that they were all
7 black and white; isn't that correct?

8 A. I think so.

9 Q. And in any event, did you, when pointing to a
10 person in the first photo, did you indicate that a hairline
11 like this may have appeared, a little darker, but it looks
12 like him. Did you indicate that?

13 A. I may have said something similar to that. I may
14 have.

15 Q. Okay, and I think you indicated that the face was
16 shaped the same way; right?

17 BY MR. EVANS: Your Honor, again I object.
18 This particular lineup that he is referring to had
19 nothing to do with this Defendant. It was the
20 other person that he had looked at out there that
21 day, and again, it has nothing to do with this
22 motion that we are here on.

23 BY THE COURT: Well, I am here and I'm going--

24 BY MR. EVANS: --We were not noticed of that.
25 If he wanted to attack them, he at least should
26 have noticed us so that we would have known what he
27 was going to raise today.

28 BY THE COURT: Well, you should have
29 anticipated he was going to raise this. I'm going

1 to hear this. Go ahead.

2 BY MR. LUMUMBA: Okay.

3 Q. Just to reflect to make sure I am right, you only
4 saw the face of one person out there; isn't that right?

5 A. That's correct.

6 Q. I see. And you had told the police that; right?

7 A. That's correct.

8 Q. Now the-- you indicated in this first lineup that
9 the face was the same shape; isn't that correct?

10 A. I think so and I think I also told them, I think he
11 has got more of a receding hairline. I believe that's what I
12 told them.

13 Q. Okay. And of course, and then when you-- you
14 looked at the second lineup. You pointed to a person again;
15 right? You pointed to another person?

16 A. (No immediate response.)

17 Q. Well, let me ask you this. Did you point to one of
18 the pictures in the second lineup? Or first of all, I guess
19 I should ask you, you saw a second lineup; is that correct?

20 A. That's correct.

21 Q. Was it color or black and white?

22 A. It may have been colored. I don't know. I don't
23 remember that part of it. I saw the pictures. That's all I
24 can remember.

25 Q. Okay. And when you saw the second lineup, did you
26 point to a person in that lineup?

27 A. I did.

28 Q. Okay. And would it be safe to say that at no time
29 did you ever say that you were positive that that was the

1 person that you had seen on that day for the first time in
2 your life on July the 16th of 1996?

3 A. I told them, I said, "I think that's him. I
4 believe that's him." I said, "I am sure that's him." That's
5 the words I said.

6 Q. So you said you were sure that was him?

7 A. I said, "I'm sure that's him."

8 Q. Okay. Now this is a person that you had seen for
9 one time in your life; right?

10 A. That's correct. As far as I know.

11 Q. And based upon that one glimpse -- you glimpsed at
12 him once; right?

13 A. That's correct.

14 Q. You now are telling us that you told them that you
15 were sure that was him; is that right? Is that what you want
16 to tell us now?

17 A. I may not have told them that right at first there,
18 but after I looked at it, you know, for a little bit, I said,
19 "I believe that's him. I think that's him." I know I said
20 that the first time.

21 Q. Okay. You first said, "I believe that's him"?

22 A. I said, "I think that's him. I believe that's
23 him."

24 Q. Okay, you said you think that's him?

25 A. Uh-hum.

26 Q. Okay, then you think you said you believe that's
27 him?

28 A. That's right.

29 Q. Then you think you said you were sure that was him;

1 right?

2 A. That's correct.

3 Q. Now as you were looking at him, it would be safe to
4 say-- well, let me ask you first of all; I'm going to present
5 to you what is marked as Exhibit 1, and I will get the copy
6 marked as Exhibit 1.

7 BY THE COURT: Well, let's do that so we can
8 keep it in order. Let's mark the copy now.

9 BY MR. LUMUMBA: Okay, that's what I am doing
10 right now. In fact, I am going to mark both of
11 those, both copies. I'm not going to mark--

12 BY THE COURT: I understand that.

13 BY MR. LUMUMBA: I'm going to mark both
14 copies.

15 BY THE COURT: Of the two different lineups?

16 BY MR. LUMUMBA: Yeah.

17 BY THE COURT: Okay, go ahead and let her mark
18 those. Any objection to that?

19 BY MR. EVANS: No, sir, Your Honor.

20 BY THE COURT REPORTER: Is this for
21 identification or in evidence?

22 BY THE COURT: You can mark-- do you want them
23 admitted as exhibits?

24 BY MR. LUMUMBA: Yes. I would only ask that
25 before you take them, let me run copies of the
26 copies, so I will have something still.

27 BY THE COURT: Well, you can do that before
28 you leave today.

29 BY MR. LUMUMBA: Okay, but I do, I wanted them

1 admitted.

2 **BY THE COURT:** Okay. Another thing is
3 apparently you don't have the original of that, of
4 the other lineup.

5 **BY MR. LUMUMBA:** No.

6 **BY THE COURT:** So when you are referring to
7 that lineup, make sure you refer to the exhibit
8 number so it will be in the record as to where you
9 are.

10 (COPIES OF PHOTO LINEUPS WERE MARKED AND
11 RECEIVED IN EVIDENCE AS DEFENDANT'S EXHIBITS D-1
12 AND D-2 TO THE MOTION TO SUPPRESS IDENTIFICATION.)

13 **BY MR. LUMUMBA:**

14 Q. First of all, I'm going showing you those copies.
15 Do you recognize either one of those sheets as a lineup that
16 you were shown that day? If you do, let me know.

17 A. To tell you the truth, I can't tell nothing about
18 neither one of these.

19 **BY MR. EVANS:** Your Honor, I thought the whole
20 purpose of him getting the original, copy of the
21 original from me was so that we could use it.

22 **BY THE COURT:** Now I think we can.

23 **BY MR. LUMUMBA:** Yeah, I think we can.

24 **BY MR. LUMUMBA:**

25 Q. And the only other thing I want to ask you is that
26 prior to coming here today, how did you become informed that
27 you were going to be asked to come here for this hearing?

28 A. I got this thing right here from you day before
29 yesterday afternoon about 7 o'clock.

1 Q. Okay. Since you have been here or any time that
2 time, have you had a chance to look at any photos that are in
3 the possession of either the police, sheriff, state troopers,
4 or the District Attorney?

5 A. They haven't showed me anything today here.

6 Q. Okay, have they showed you any time before you came
7 here today? Let me say, let's -- you were shown this some
8 time after July 16th; is that correct? You were shown
9 photos?

10 A. Yeah, I was shown some, yeah.

11 Q. Have you been shown, have you looked at any photos
12 any time since that time that were in the possession of any
13 of these people I just named? The police, prosecutor,
14 anybody, anybody like that?

15 A. Not that I remember.

16 Q. Have they ever talked to you about what you would
17 be asked here today?

18 A. Not that I remember.

19 Q. Oh.

20 A. Because I didn't even know what I was being
21 summonsed down here for.

22 Q. I see. Have you talked to either the District
23 Attorney or anybody from the police department or anybody
24 from the DA's office?

25 A. I have here today.

26 Q. Okay, and when was that?

27 A. Today.

28 Q. When today?

29 A. All during the day. From the time I got here this

1 morning when I saw them up until the time when I walked back
2 in here.

3 Q. And prior to today, when is the last time you
4 talked to them?

5 A. I couldn't tell you that.

6 Q. When is the last time you have been at the DA's
7 office?

8 A. Last time I have been in the DA's office? I don't
9 think I have ever been there but one time. That has been
10 about a year or two ago.

11 Q. When is the last time the DA or anybody from his
12 office has been to your store?

13 A. I don't have a store. That is my son's store.

14 Q. When is the last time that they have come to visit
15 you at the store or in the house--

16 A. --I don't know if the DA has ever been to my son's
17 store. Now if he has ever been there, I don't know. Now
18 John has been there, but he lives-- he comes by there every
19 once in a while. But as far as discussing this, I mean, you
20 know. Now they may come in there when I'm not there because
21 I just go up there every once in a while. Like I said, the
22 store belongs to my son.

23 Q. John has never come by to discuss the photos with
24 you?

25 A. Not that I know of.

26 Q. He has never had a discussion with you since that
27 day that you identified these?

28 A. I was shown those photographs right there - I don't
29 know if they was those photographs - at Tupelo.

1 Q. Okay.

2 A. And they asked me to tell the truth, and I couldn't
3 have swore that them was the particular pictures that I
4 looked at. And I said I couldn't tell them that, and I think
5 I was shown the pictures after then and told that that-- said
6 this-- and would-- and said, you know, that that was them.
7 But now I couldn't swear that them right there is the
8 pictures I seen because them pictures could have been
9 changed. They may be copies; I don't know.

10 Q. I understand. Who told you that these were the
11 pictures you were shown after you testified?

12 A. I don't remember that.

13 Q. Was that at the Tupelo trial or afterwards?

14 A. You know, I really don't know. I really don't. I
15 really can't tell you that. I really don't know.

16 Q. Okay. Now I am showing you what is Exhibit number
17 2 and ask you if those are, in fact, the pictures you were
18 shown?

19 A. They are.

20 Q. Pardon?

21 A. They are.

22 Q. Okay. Now but when you were shown those at the
23 Tupelo trial--

24 BY MR. EVANS: --Your Honor, I object because
25 he was not shown that group at the Tupelo trial, so
26 that is improper.

27 BY THE COURT: Maybe you ought to ask him that
28 question.

29 BY MR. LUMUMBA: Okay; yes, sir.

1 BY MR. LUMUMBA:

2 Q. Were you shown some pictures at the Tupelo trial?

3 A. That's correct.

4 Q. Were these the pictures you were shown?

5 A. I do not know whether these are the pictures I was
6 shown or not.

7 Q. I see. And, but the pictures you were shown at the
8 Tupelo trial you have indicated that you had never seen those
9 before; is that right?

10 A. No. They asked me if that was the pictures I was
11 shown. I told them I couldn't tell you if that was the
12 pictures I was shown. I couldn't tell you if these right
13 here are the pictures I was shown.

14 Q. Excuse me, Judge. So you can't tell me whether
15 those are the pictures you were shown?

16 A. You could walk out of this room right here and swap
17 them right out there. I couldn't tell you whether these are
18 the same pictures I was shown. These are some pictures like
19 this.

20 Q. I see. So you don't know whether those are the
21 pictures you were shown or not?

22 A. It's like I told you, these are-- I was shown
23 pictures like this.

24 Q. Okay. Can you at this time see all the persons on
25 those pictures?

26 A. Can I do what?

27 Q. Can you see all the persons, all those pictures?

28 A. Yes, I can.

29 Q. Okay, and let me get a little closer to you so you

1 can make sure you can hear me.

2 (NOTE: Counsel's voice was very hoarse.)

3 Q. On that picture as depicted, who has the biggest
4 head on that picture?

5 A. This man right here. (Witness points.)

6 Q. That is man number what?

7 A. Number four.

8 Q. Four.

9 (Pause while Mr. Lumumba drinks a cup of
10 water.)

11 Q. Can I see that again, please?

12 (After Counsel looked at the exhibit, it was
13 again handed back to the witness.)

14 Q. Who has the darkest complexion in those pictures?

15 A. Well, to me it's about three of them on there that
16 is about the same.

17 Q. And who are those three?

18 A. Be this one and this one. This one, this one, and
19 this one.

20 Q. Give the Judge the numbers; what numbers?

21 A. 1, 6 and 4.

22 Q. And would you say that although you say those are
23 about the same, number 4 is actually darker than the other
24 two people; isn't that correct?

25 A. To me what appears darker is he has got a beard
26 right there.

27 Q. Okay. So that makes him appear darker than the
28 other two people?

29 A. But you asked me what complexion. You asked me the

1 complexion.

2 Q. Does the beard make him appear darker than the
3 other two people?

4 A. Well, naturally it does.

5 Q. And you didn't tell the officers on the 16th that
6 the person that you saw had a beard, did you?

7 A. I was never asked.

8 Q. Did you ever tell them when they asked you to
9 describe him that he had a beard?

10 A. I don't think so.

11 Q. Okay.

12 A. I don't remember that. I don't think so.

13 Q. Now would it be safe to say that number 4 from this
14 picture appears to be older than number 6?

15 A. I couldn't tell you that. I couldn't tell you
16 that. My son runs the store, and I see people like this
17 every day, and I can't tell you their age. I can't even near
18 about start telling you their age.

19 Q. I'm not asking you to tell me their age. Do I
20 appear to be older than Mr. Freelon?

21 BY MR. EVANS: Your Honor, I don't believe--

22 BY THE WITNESS:

23 A. --I don't have any idea, man--

24 BY MR. EVANS: --either one of them are on the
25 lineup--

26 BY THE WITNESS:

27 A. --I have no way of knowing. I mean I couldn't tell
28 you--

29 BY MR. EVANS: --and I object.

1 **BY THE COURT:** Overruled.

2 BY MR. LUMUMBA:

3 Q. You can't tell me whether I appear to be older than
4 Mr. Freelon?

5 A. I sure can't. I can't tell you.

6 Q. Do I appear to be older than this young man sitting
7 right here?

8 (NOTE: Mr. Lumumba pointed to a man sitting
9 in front of the jury box from the Department of
10 Corrections.)

11 A. Well, that is obvious there. I mean, you know, but
12 as far as that right there, I couldn't tell you that.

13 Q. So I do appear to be older than him?

14 A. Well, I would say so, yeah. And I may be wrong
15 too, but I would say so.

16 Q. Okay. And number 4 in your view, you can't tell me
17 whether he appears to be older than 1 and 6?

18 A. I sure can't.

19 Q. Can you tell me whether he appears to be older than
20 1?

21 A. I sure can't.

22 Q. Okay. Does number 6 have a beard?

23 A. No, he does not.

24 Q. Does he have a mustache?

25 A. It doesn't look like it.

26 Q. Does number 1 have a beard that you can see?

27 A. It doesn't look like it.

28 Q. Does number 1 have a receding hairline?

29 A. No, he does not.

1 Q. Does number 6 have a receding hairline?

2 A. He has a slight receding hairline.

3 Q. Who has the most pronounced, who has a receding
4 hairline in these pictures?

5 A. What now?

6 Q. A receding hairline.

7 A. This one sort of has a receding hairline, this one,
8 and this one right here.

9 Q. Number 4?

10 A. Number 2, number 6 and number 4.

11 Q. Okay, but number 1 does not?

12 A. No, he does not. Not to me he doesn't, from what I
13 call a receding hairline.

14 Q. I see. So number 4 has the biggest head?

15 A. In these pictures here, yes.

16 Q. Right. Number 4 is darker than everybody except
17 for 6 and 1; right?

18 A. To me, yeah.

19 Q. Number 4 and number 1, who is the only person you
20 say is as dark as number 4, does not have a receding
21 hairline; right?

22 A. I told you number 6, number 4, and all of them had
23 the same complexion. Yeah, number 1 does not have a receding
24 hairline.

25 Q. Right, and he is one of the people you said that
26 was as dark as number 4?

27 A. That's right.

28 Q. Who doesn't have a beard?

29 A. He doesn't appear to have one. Part of the chin is

1 cut off there. I don't think he has got one. He hasn't got
2 one on the side of his face.

3 Q. Who you can't tell is younger than this man?

4 A. I sure can't.

5 Q. From this picture?

6 A. I sure can't.

7 Q. All right. And I see. Now number 5 does not have
8 a receding hairline; right?

9 A. Not really.

10 Q. He also has braids in his hair?

11 A. That's correct.

12 Q. The man you saw that day, you never told the police
13 that he had braids in his hair?

14 A. No, I did not.

15 Q. By the way, you have seen a lot of people who have
16 receding hairlines; right?

17 A. Well, sure.

18 Q. There is a whole, millions of people with receding
19 hairlines?

20 A. Sure.

21 Q. A lot of dark black people; correct?

22 A. Uh-hum.

23 Q. Millions of them; right?

24 A. What now?

25 Q. Thousands of millions of dark black people?

26 A. I would say so. I don't know.

27 Q. But there is a bunch of them?

28 A. There is a bunch of them, yeah.

29 Q. All right. A lot of people with big heads?

1 A. I would say so.

2 Q. But the only person in this lineup-- the biggest
3 head in this lineup is number 4?

4 A. This is a closer up picture than these right here.
5 These right here may have a big head; I don't know.

6 Q. But at least the way they are displayed this head
7 looks much bigger than all the rest?

8 A. That's correct. From this pictures, yeah.

9 Q. From the way they are displayed?

10 A. Uh-hum.

11 Q. And that's what you were looking at is these
12 pictures; right?

13 A. At his head? How big his head was?

14 Q. You were looking at these pictures; right?

15 A. Yeah, I was looking at these pictures. I guess
16 these are the pictures, yeah.

17 Q. Yeah, and you, of course, have never seen number 1,
18 2 or 3 in life, have you?

19 A. I don't know whether I have or not. If I have, I
20 don't know them.

21 Q. And you have never seen number 5 and 6; right?

22 A. If I have, I don't know them.

23 Q. Okay. Now you were never shown a live lineup, were
24 you?

25 A. That's correct.

26 Q. I'm sorry. You were never shown a live lineup, a
27 bunch of men standing--

28 A. I was not.

29 Q. Okay. When you were testifying at trial, you never

1 said that you were sure that Mr. Flowers was the man that you
2 saw that day; right?

3 A. I told them that day in the court up there the man
4 I seen didn't have glasses on. He was not that heavy.

5 Q. And then he took his glasses off; right?

6 A. He did, and it was dark in that courtroom.

7 Q. All right, and you never said when he took his
8 glasses off that he was the man, did you?

9 A. No, sir. I don't think I actually come out and
10 said that, no. I think you are correct on that.

11 Q. All right, let me see what you did say. On page
12 435, did you indicate--

13 A. Said, I think that's him.

14 Q. You didn't say you were sure it was him; right?

15 A. That's what I just told you.

16 Q. Okay. And in fact, and then on page 436 you say
17 it looks like him; right?

18 A. Uh-hum.

19 Q. Okay, and that was the same thing you said when you
20 saw the first set of photos. You indicated that you saw a
21 man that looked like him; is that correct?

22 A. Wait a minute.

23 Q. You said hair looked like this, may have appeared
24 a little darker, but it looks like him; right?

25 A. That's correct. That's what I told you while ago.

26 Q. Okay, now that's what you said when you saw the
27 first photos?

28 A. That's what I told you while ago.

29 Q. Right, that was the photos. Okay. Now let me make

1 sure I understand what you are saying now. You said that
2 about the man that you pointed to in the first set of photos
3 that you saw that day; right? That you saw when the police
4 were showing them to you; right? You got shown two sets?

5 A. I think that's what I said. I think I said
6 something like it has got the same, looked like the same
7 complexion. I think it looks like him. I think that is
8 basically what I said.

9 Q. But you said at that time that the man looked a
10 little darker; right?

11 A. I may have.

12 Q. Okay. And in fact, that's what you said in court
13 when you looked at Mr. Flowers after he took off his
14 glasses. You indicated, in fact, that was the last thing you
15 said about him is that the man appeared to be a little
16 darker; right?

17 A. That's what I said because like I told them up
18 there, that courtroom was dark, and I could not see very well
19 in there.

20 Q. You couldn't see very well in a dark courtroom;
21 right?

22 A. That's right.

23 Q. And then you told the people that the man that you
24 saw that day looked a little darker than Mr. Flowers; right?

25 A. I told them that the man didn't have glasses on,
26 and he looked a little darker.

27 Q. And that is after the man, Mr. Flowers, took off
28 his glasses in the courtroom?

29 A. I think that is right.

1 Q. Was any of your discussions-- who showed you these
2 pictures? Maybe I should ask you that first.

3 A. I think John Johnson was there. I think Wayne
4 Miller was there. It may have been somebody else there; I
5 don't remember. I know those two were there, I think.

6 Q. All right. When they showed you those pictures,
7 was your conversation being recorded?

8 A. I don't know. I don't remember. I don't remember
9 that. It could have been; I don't remember.

10 Q. When they talked to you on the 16th, was your
11 conversation being recorded?

12 A. I don't really remember. I know at times there I
13 was there and they was telling me I was being recorded. It
14 may have been; I don't know. I don't remember that.

15 Q. Do you remember how many different times you
16 actually were recorded?

17 A. I have no idea.

18 Q. Was it more than one, or do you know?

19 A. I have no idea.

20 Q. Do you remember if you were ever recorded?

21 A. Oh, I was recorded because they told me they was
22 going to record this. Now how many times, I don't know.

23 Q. Were you ever recorded before you made an
24 identification or-- strike that. Were you ever recorded
25 before you were shown the pictures, the two sets of pictures
26 that you were shown?

27 A. I don't think so, but I'm not sure. I don't think
28 so. I may have been; I'm not sure.

29 Q. Now at the time that you were shown pictures--

1 well, let me ask you this. Were you ever shown any pictures
2 of a car?

3 A. No.

4 Q. The police never showed you any pictures of a car?

5 A. No.

6 Q. Never asked you to identify a car?

7 A. Yes.

8 Q. They asked you to identify a car?

9 A. Yes.

10 Q. And where was the car?

11 A. Behind the police department in Winona.

12 Q. Did you ever identify a car?

13 A. No, I did not.

14 Q. Okay, what kind of car did you look at? How many
15 cars did they show you?

16 A. One car.

17 Q. And what did it look like?

18 A. It was, I really don't know what kind of car it
19 was. It was a two-tone beige or two-tone brown or something;
20 I don't know.

21 Q. And you didn't identify it?

22 A. No, I did not.

23 Q. And you didn't identify it because you knew it?

24 What car were they referring to when they wanted you to make
25 an identification? In other words, what was it that they
26 were asking you to identify or to compare the car to?

27 A. The one I seen them standing beside and in front
28 of.

29 Q. Okay. And by the way, when you were saying at the

1 last trial that the man looked a little darker than him, when
2 asked if that was the man, meaning Mr. Flowers, okay; do you
3 remember at the last trial you said the man was a little
4 darker? You were telling the truth, weren't you?

5 A. Do what?

6 Q. You were telling the truth; right?

7 A. I have been telling you the truth all day, sir.

8 Q. Were you telling the truth at the trial when you
9 said the man looked a little darker?

10 A. I just told you, I have been telling you the truth
11 all day, and I just told you that just a few minutes ago.

12 Q. Okay, but I wasn't at the trial. My question,
13 listen carefully. Were you telling the truth at the trial
14 when you said the man looked darker?

15 A. Yes, I was telling the truth.

16 Q. Okay. And you were asked several times if this
17 here was the man; right? At the trial; right?

18 A. I think so.

19 Q. And at no time did you say you were certain that he
20 was the man; right?

21 A. I told them I believed that was him.

22 Q. At any time did you say you were certain that was
23 him?

24 A. All I ever told them was I believed that was him.

25 Q. Well, actually you didn't say, "I believe it was
26 him"; you said, "I think"?

27 A. Well, maybe I said, "I think it's him."

28 Q. Okay, did you ever say that you were certain it was
29 him?

1 A. I don't think so.

2 Q. All right. And you were telling the truth all
3 those times when you answered that question?

4 A. I told you I been telling the truth all through
5 then and all day today, sir.

6 Q. All right. And you told the truth back then?

7 A. I told the truth back then.

8 Q. Okay. Now so when you saw this car that they
9 showed you and you didn't identify it; is that right?

10 A. I did not.

11 Q. Did you not identify it because you weren't sure
12 that it was the car, or did you not identify it because you
13 were sure that it was not the car? Do you understand my
14 question?

15 A. No, I don't.

16 Q. When you saw the car, did you know whether or not
17 that was the car, the car they showed you?

18 A. It didn't look like the car I seen.

19 Q. Okay. So you said it wasn't, didn't look like the
20 car you saw; is that right?

21 A. That's exactly right.

22 Q. And what did the car that you saw look like?

23 A. The car I saw had taillights all the way across the
24 back, and it was filthy. It was completely covered with dust
25 and mud.

26 Q. Was it a beige brown?

27 A. It was a brown car, a brown car.

28 Q. Was it a beige brown looking car?

29 A. Well, it was sort of beige brown. It was brown.

1 That's all I could tell you about it because it had a lot of
2 dust and a lot of dirt on it.

3 Q. And taillights went all the way across?

4 A. Went all the way across it.

5 Q. Now prior to the time-- when you were brought down,
6 when they brought you down to show you the pictures, did they
7 tell you you were coming down to watch, see pictures?

8 A. I don't remember whether they told me that or not.
9 They didn't bring me down. They called me and asked me to
10 come up there, and I went up there.

11 Q. Okay. You went up there?

12 A. That's right.

13 Q. Up where?

14 A. To the police department in Winona.

15 Q. Okay, and when you went down, did they tell you why
16 you were there?

17 A. Do what?

18 Q. Did they show you pictures, or did you have a
19 discussion first?

20 A. I don't remember. I think we talked a little bit
21 there, and then I think they showed me the pictures. I
22 believe that's the way it was.

23 Q. And they told you that they were going to show you
24 some pictures; is that correct?

25 A. Uh-hum.

26 Q. And they showed you some pictures?

27 A. That's correct.

28 Q. And when they were showing you the pictures, they
29 indicated that they were going to show you a picture of the

1 person that you saw out there that day; is that right?

2 A. No, that is not what they said.

3 Q. What did they say?

4 A. They said they had some pictures they wanted me to
5 look at and wanted to know if I could look at it and see if
6 one of them would be the person that I looked at. They
7 showed me some pictures.

8 Q. I see. And this was some time later; right?

9 A. It was later than after the day that this
10 happened. Yeah, it was-- I don't know how long it was. It
11 was a while after that.

12 Q. Prior to the time that you saw the pictures, had
13 there been discussion in the community about this incident
14 that occurred at Tardy's grocery store?

15 A. Well, sure. There was discussion. That is a small
16 town. Everybody in town knew it.

17 Q. And was there discussion about who the people were
18 that the police were talking to or who may have been
19 suspected?

20 A. Wait a minute. Tell me that, ask me that again.

21 Q. Was there any discussion about who the police had
22 been talking to about this case, who the suspects were?

23 A. I never heard anything about any of it.

24 Q. Okay, you never heard Doyle Simpson's name come up?

25 A. Uh, didn't even know who Doyle Simpson was up until
26 that morning that the crime happened.

27 Q. But you learned that morning?

28 A. That morning. That's when I heard that, that
29 morning.

1 Q. Okay, so did you hear about his name again prior to
2 the time you saw the pictures? Did you ever hear his name
3 mentioned again?

4 A. Yeah, when he come down to my brother-in-law's
5 place and said his gun was stolen.

6 Q. All right, I see. So you heard about his name
7 then; is that right?

8 A. That's when I heard about him. Yeah, never even
9 knew he existed in this world. Didn't even know him.

10 Q. Did you hear about him again after that day, after
11 that time?

12 A. I am sure I did.

13 Q. Okay. Did you hear Curtis Flowers' name mentioned?

14 A. No, I did not.

15 Q. You never heard that?

16 A. Not then I didn't, no.

17 Q. Did you hear after that time?

18 A. It was a while after that time, yeah, because I
19 didn't even, I didn't know this fellow.

20 Q. You heard about his name before or after you saw
21 the photos?

22 A. You know, I really don't know. If I told you one
23 way or the other, I would be lying to you, and I'm not going
24 to lie to you. I don't know.

25 Q. Okay. And so let me see. Maybe you answered this,
26 but let me make sure. Was the conversation that you had
27 prior to the time that you were shown the photos and at the
28 time you were shown the photos, was that conversation taped?

29 A. When they showed me the photos?

1 Q. (Counsel nods his head.) If you know.

2 A. I really don't know, but I am sure it was. I don't
3 know. I really don't know. I couldn't tell you if it was or
4 wasn't.

5 Q. Okay, let me ask you this. You recall some time
6 ago I came to your store to talk to you; is that correct?

7 A. I recall you coming to my son's store and asking,
8 telling me you wanted to talk to me and made an appointment
9 to talk to me, and you never showed up. I remember that.

10 Q. You were at the store when I came?

11 A. That's right. I was sitting at the table with my
12 wife and my brother and my sister and her husband.

13 Q. Okay, and did you talk to me at that time?

14 A. No, I did not. You made an appointment with me for
15 the Monday morning at 10 o'clock you wanted to talk to me,
16 and you never showed up.

17 Q. And did I ask to talk to you the day that I came?
18 I asked to talk to you then, didn't I?

19 A. When? That day?

20 Q. Yeah.

21 A. Yes, you did.

22 Q. Did you talk to me that day?

23 A. That night at the store?

24 Q. Yeah.

25 A. No, I did not.

26 Q. Okay, you refused to talk to me that day?

27 A. I did not refuse--

28 BY MR. HORAN: --Your Honor, what does this
29 have to do with the identification, Your Honor--

1 BY THE WITNESS: --to talk to you no such a
2 thing.

3 BY THE COURT: Wait a minute, Mr. Collins.
4 This really doesn't have anything to do with the
5 motion. Let's move on.

6 BY MR. LUMUMBA:

7 Q. Okay. Did you later on tell me that you wouldn't
8 talk to me at all?

9 BY MR. HORAN: Objection, Your Honor. Did you
10 not just sustain an objection--

11 BY THE COURT: --It just doesn't have anything
12 to do with this motion. It may be at some other
13 point in time. Anything else, Mr. Lumumba?

14 BY MR. LUMUMBA: I have nothing at this time.

15 BY THE COURT: All right.

16 CROSS-EXAMINATION BY MR. EVANS:

17 Q. Mr. Collins, you live in Winona; is that correct?

18 A. That's correct.

19 Q. And the day of the Tardy murders you were downtown?

20 A. That's correct.

21 Q. And you happened to see things at that time that
22 you thought might be important to the law enforcement
23 officials; is that right?

24 A. That's correct.

25 Q. And that same day you went to different law
26 enforcement officials, and you told them what you knew in
27 case it might be important; is that right?

28 A. That's correct.

29 Q. Now the day that this happened you have given

1 detailed statements about where you traveled, who you saw,
2 what kind of clothing different people had on, like Roxanne.
3 I believe you described her clothing when you saw her going
4 back in the store; is that right?

5 A. That's correct.

6 Q. All of these things, all these details were from
7 your memory; is that right?

8 A. That's correct.

9 Q. Nobody told you what to say, did they?

10 A. No, they did not.

11 Q. And when you saw these two people that you say
12 looked like they were arguing out in front of the store, did
13 anybody try to tell you what they looked like, or are you
14 basing what you remember on your own memory of seeing that
15 person in front of the store?

16 A. No, they did not. I told the people inside the
17 place that morning exactly-- I give them a description of it
18 right inside that morning just a few minutes after all this
19 happened.

20 Q. And when you were shown the lineup, this color
21 lineup which was marked on the copy D-2, you didn't have any
22 hesitation in pointing out photograph number 4, did you?

23 A. Did not.

24 Q. And the reason you didn't have any hesitation
25 picking that out is that is the person that you saw in front
26 of the store; is that right?

27 A. I believe it is; yes.

28 Q. And you told John Johnson and Wayne Miller, That is
29 the person that I saw in front of the store, didn't you?

1 A. I think so, yes.

2 Q. And you put your initials on the back of that
3 photograph on the original copy, did you not?

4 A. That I did.

5 Q. And both Wayne Miller and John Johnson witnessed
6 you doing that, didn't they?

7 A. That's correct.

8 Q. And you have testified in a previous trial in this
9 same basic case, have you not?

10 A. That's correct.

11 Q. And in that case you told on the stand about seeing
12 the two people in front of the store, looking at one of
13 them's face and identifying him in a lineup, did you not?

14 A. That's correct.

15 Q. And you have described that the person you saw in
16 the courtroom in Tupelo had on glasses; is that right?

17 A. I said the one that I seen didn't have glasses on.

18 Q. I meant in the courtroom.

19 A. Oh, yes, sir; that's correct.

20 Q. And you had a chance to see him without his glasses
21 on; is that right?

22 A. That's correct.

23 Q. And the courtroom in Tupelo was darker in the front
24 part than this courtroom; is that correct?

25 A. That's correct.

26 Q. Do you see the Defendant sitting over here?

27 A. Yeah. He looks darker now in here than he did up
28 there that day.

29 Q. Is that the person that you saw in front of Tardy's

1 store?

2 A. I will always believe that's the man I seen.

3 Q. And you are basing that on your own memory and not
4 what someone has told you; is that right?

5 A. That's correct.

6 Q. Did anybody in any way - John Johnson, Wayne
7 Miller, or anyone attempt to point out which picture for you
8 to identify on that lineup?

9 A. It wouldn't have done any good to have done that
10 because I wouldn't have listened to you.

11 Q. And opposing counsel has indicated that one of them
12 may have somewhat of a larger picture. Did anybody tell you
13 to pick out the one with the large picture?

14 A. No, they did not.

15 Q. Did anybody tell you to pick out the one with the
16 small picture?

17 A. No, they did not.

18 Q. Nobody tried to influence you in any way?

19 A. No, they did not.

20 Q. And you wouldn't have let them if they had, would
21 you?

22 A. No, I would not have.

23 Q. And you are only identifying this Defendant because
24 he is the person that you saw there that day--

25 A. --I will always believe that's the one I saw.

26 BY MR. EVANS: Nothing further, Your Honor.

27 BY THE COURT: Okay, Mr. Collins. You are
28 excused for now. I'm going to ask you to stay
29 unless y'all-- can y'all finally excuse him?

1 BY MR. EVANS: Yes, sir.

2 BY MR. LUMUMBA: Yes, sir.

3 BY THE COURT: Mr. Collins, you can go home.

4 BY THE WITNESS: All right. Thank you, sir.

5 WITNESS EXCUSED.

6 BY THE COURT: Who will you have next?

7 BY MR. LUMUMBA: I would call John Johnson.

8 BY THE COURT: John Johnson.

9 JOHN JOHNSON,

10 upon being called to testify as a witness by the Defendant on
11 the Motion to Suppress Identification, having first been duly
12 sworn, testified as follows, to-wit:

13 BY THE COURT: Have a seat, please, and then
14 state your name for the record.

15 BY THE WITNESS: My name is John Johnson.

16 DIRECT EXAMINATION BY MR. LUMUMBA:

17 Q. Mr. Johnson, when is the last time prior to this
18 hearing that you talked to Mr. Collins?

19 A. I spoke to him day before yesterday, I think it
20 was.

21 Q. Day before yesterday. Where was he at?

22 A. At his home.

23 Q. Okay, why were you at his home?

24 A. I stopped to check with him to see if he had been
25 subpoenaed to be here.

26 Q. Did you have a discussion with him?

27 A. Yeah.

28 Q. What did you discuss?

29 A. Just basically asked if you and your counsel had

1 asked him any questions beyond what had normally been
2 discussed, and he indicated that you had not.

3 Q. All right, so just the day before yesterday at his
4 home?

5 A. Yeah.

6 Q. Is that right?

7 A. Yeah.

8 Q. Okay. Now when you saw him there, did you tell him
9 what this hearing was going to be about?

10 A. No, I didn't know that much about it myself.

11 Q. I see; so you didn't say anything about pictures?

12 A. I know I probably mentioned to him there would be a
13 picture lineup, you know, the same picture lineup from
14 before.

15 Q. You said the same one from before. You told him
16 that; right?

17 A. I don't remember the exact wordings that were made.

18 Q. But as far as you can remember, you said something
19 like that?

20 A. I don't remember exactly what was said in that
21 regard.

22 Q. Well--

23 A. The picture lineup has to do with his testimony, I
24 know, and the picture lineup was probably mentioned, yes.

25 Q. Okay, and what you shared with me a minute ago, to
26 make sure I heard it right, you did say that you probably
27 told him it would be the same picture lineup that was there
28 before; right?

29 A. No, that is not what I said.

1 I'm--

2 BY MR. EVANS: --It's the same thing.

3 BY MR. LUMUMBA: It's not the same.

4 BY THE COURT: Well, let me see it, and I will
5 clear it up whether it's the same thing.

6 BY MR. EVANS: This is getting ridiculous.

7 (Folder of photographs and Exhibits D-1 and
8 D-2 were handed to the Court.)

9 BY THE COURT: Well, it is obviously not the
10 same thing. This is clearer.

11 BY MR. EVANS: That is not the copy that I
12 gave him either.

13 BY THE COURT: Okay, well--

14 BY MR. EVANS: The copy that I gave him is
15 identical to this one.

16 BY MR. LUMUMBA: I have never seen a copy like
17 that.

18 BY MR. EVANS: I might as well do your work on
19 this too. I have done it on everything else. And
20 I want that back too, Your Honor, because that is
21 the only copy I have got.

22 BY MR. LUMUMBA: Judge, I have no problem with
23 that.

24 BY THE COURT: Okay.

25 BY MR. LUMUMBA:

26 Q. I am showing you a copy of Exhibit number 2 and ask
27 you if you have seen that before?

28 A. Repeat your question.

29 Q. Have you seen that before?

1 A. Yes, I have.

2 Q. And when were you shown, when did you see that?

3 A. I'm not sure. This is a photostatic copy, I would
4 assume, but I have seen one similar to this recently. I have
5 had one recently like that.

6 Q. Recently, within the last several days?

7 A. Yeah.

8 Q. And did Mr. Collins recently see it?

9 A. Yes, he did.

10 Q. And where was he at when he saw it?

11 A. At his house.

12 Q. Was that the same day you went over there?

13 A. Yes. You know, let me, if I could rephrase that.
14 I had it with me. Whether or not he actually looked at it or
15 not, I don't know, but I had it with me, and I indicated to
16 him that my initials were on there, and the date and all was
17 on there.

18 Q. Mr. Johnson?

19 A. Uh-hum.

20 Q. You took it out at the police station--at the, was
21 it in the DA's office? Where was the picture at before you
22 picked it up?

23 A. I got it from the file in the office in Grenada.

24 Q. You picked it up, and you knew where you were
25 going; is that right?

26 A. Yes.

27 Q. You knew you were going to Mr. Collins' office?

28 A. Yes.

29 Q. You knew you were going to Mr. Collins' office, and

1 that's why you got it so you could go?

2 A. In case he asked me questions, yes.

3 Q. And you went to him, and just a few minutes ago you
4 just told us that he saw the pictures; right?

5 A. He probably saw the pictures, yes. I can't swear
6 that he did.

7 Q. I mean I know you can't look through his eyes, but
8 you knew that you showed him the picture; right?

9 A. I didn't, I don't know that I actually showed him
10 the pictures, but I had the pictures in my personal
11 possession when I talked to him.

12 Q. And you had them in your possession so they could
13 be seen?

14 A. If he asked to see them, yes.

15 Q. I see. Now let me-- now we have only been talking
16 for the last ten minutes or so; right. Me and you here?

17 A. I don't know exactly how long we have been talking.

18 Q. Well, I just gave you that picture just less than
19 six or seven minutes ago; right?

20 A. Probably.

21 Q. And I didn't tell you what to say when I gave it to
22 you; right?

23 A. No.

24 Q. I just gave it to you and asked the question. One
25 of the questions was did Mr. Collins see that picture.
26 That's all I did; right?

27 A. (Witness shrugs.)

28 Q. Is that right?

29 A. May have. I don't remember exactly but something

1 on that order, yes.

2 Q. Well, you do remember that you told me that he saw
3 it. You said that; right?

4 A. I said he probably saw it.

5 Q. No, but at first you said he saw it; right?

6 A. Well, he may have seen it. I don't know that he
7 saw it or he didn't see it.

8 Q. So let me understand you. You got this picture
9 from-- was it at the DA's office? I'm sorry.

10 A. Yes.

11 Q. And you went all the way over to Mr. Collins'
12 house?

13 A. I went through Winona. He lives in Winona, yes.

14 Q. And you are from Grenada?

15 A. No, I am originally from Winona. I live in Sallis
16 at this time.

17 Q. Okay, but you had to go get the picture from
18 Grenada?

19 A. I was already there.

20 Q. And you brought the picture with you from Grenada;
21 right?

22 A. I brought this with me from Grenada, yes.

23 Q. Which one? You just said this?

24 A. I had, I'm not sure if this is the same one or
25 not. It may have been a copy, but I had--

26 Q. --You had one that looked like that?

27 A. That looked like this, yes.

28 Q. Right, and for the record when we say looked like
29 this, this is a copy of Exhibit 2, and on the back of it it

1 has HWM 8/24/96; right?

2 A. Right.

3 Q. And it has-- what is this?

4 A. That is my initials.

5 Q. And what date is on it?

6 A. 8/24/96.

7 Q. And it has some spaces that appear to be blocked
8 out on the back; right?

9 A. Right.

10 Q. What is under there?

11 A. That would be the back of the picture lineup as it
12 was, or the front maybe, I don't know. The pictures of the
13 people that were involved in the lineup.

14 Q. And it has here initials "CC"; right?

15 A. That's right.

16 Q. And it has here a time and the date; right?

17 A. Right.

18 Q. And on the front of it, it actually has the same
19 pictures which are in this-- well, just for the record so we
20 can describe it, this appears to be a black and white copy;
21 is that correct?

22 A. That's right. Well, it's a photostatic copy, yes.

23 Q. Which is in black and white?

24 A. It's not in color.

25 Q. And this appears to be in color, what we have been
26 referring to as Exhibit-- is a copy, which we have been
27 referring to as the pictures which are in Exhibit 2, this
28 particular group are in color; is that correct?

29 A. Those particular pictures are in color.

1 Q. Right, and for the purpose of the record to
2 describe it, they are in a manila folder that you can open
3 up; right?

4 A. Yeah.

5 Q. And when you open it up, then it appears to be
6 what-- about what size would you say that is?

7 A. Probably 18 by 12, something like that.

8 Q. Okay, and this other copy of Exhibit 2, this other
9 depiction of the photos in Exhibit 2, this is a copy which
10 has at the top "photographic identification"; right?

11 A. Yeah.

12 Q. And it not only is in black and white, but it is on
13 an eight and a half by eleven sheet?

14 A. Yeah.

15 Q. And these pictures are clear. You can see them
16 clearly; right?

17 A. They are fairly clear. I don't know.

18 Q. Okay, well, let me ask you these questions. And
19 it's that copy, the ones that is fairly clear that you told
20 me that you took with you over to Porky Collins' home?

21 A. I'm not sure if this is the exact copy. I took a
22 copy that represented this same information.

23 Q. To Porky Collins' home?

24 A. I had it with me, yeah.

25 Q. And you brought it from Grenada?

26 A. I did.

27 Q. And it would be safe to say that you don't normally
28 carry around evidence with you from a capital murder case on
29 a day to day basis, do you?

1 A. I don't remember having anything that was marked
2 for evidence, but I had a copy of something similar to this,
3 yes.

4 Q. Well, you don't carry copies around with you of
5 capital murder evidence on a day to day basis?

6 A. (No response).

7 Q. You seem to be having some problems with that
8 question. Let me withdraw it and make it a little simpler.

9 A. I carry copies of a lot of things with me.

10 Q. I understand. But you don't go to Porky Collins'
11 house all the time; right?

12 A. No, I don't.

13 Q. And it just so happens at this time you were
14 carrying a picture which has, or a copy of a picture which is
15 similar to what you have in front of you which has Porky
16 Collins' initials on the back of it; right?

17 A. Yes, that's true.

18 Q. And you happened to go over to his house. You
19 didn't happen to go. You called him and told him you were
20 coming; right?

21 A. That's true. I think he called the DA's office,
22 and I wanted to go by and check on him.

23 Q. And in fact, as far as you know, your phones are
24 not tapped by the Defense; right?

25 A. Repeat the question.

26 Q. As far as you know, your phone is not tapped by the
27 Defense in this case, is it?

28 A. I don't have any knowledge of such.

29 Q. But so I mean, and I don't want to be facetious,

1 but you could have talked to him on the phone and asked him
2 what he got; right?

3 A. I didn't know where Porky was. He is a friend of
4 mine. He works at a store. His home is right there. I was
5 going right through Winona, and I just stopped to check on
6 him.

7 Q. With this copy of this picture?

8 A. I did have a copy of the picture with me. I also
9 had copies of a lot of things that I carry.

10 **BY THE COURT:** Mr. Lumumba, let me say this.
11 If you are trying to make the point that he took
12 the picture there and showed it and wanted him to
13 look at it, you have made that point with the
14 Court.

15 BY MR. LUMUMBA: Thank you.

16 BY MR. LUMUMBA:

17 Q. How long have you been an investigator for the DA's
18 office?

19 A. About 7 years.

20 Q. And would it also be safe to say that before that,
21 you were chief of police?

22 A. I was.

23 Q. In Winona?

24 A. That's right.

25 Q. And during this period of a year, how long was that
26 for?

27 A. I was chief of police six years; assistant chief,
28 four years. I was a policeman in Grenada and Winona prior to
29 that.

1 Q. Okay, so you have been in law enforcement for what,
2 over 20 years?

3 A. About that.

4 Q. And the reason I ask you that, one of the things
5 that you do in law enforcement, you learn about the
6 presentation of photo displays and lineups; is that right?
7 You learn how you are supposed to do it?

8 A. Sure.

9 Q. Okay. And they tell you that one of the
10 fundamental concepts is to make sure that the lineup or the
11 photo display is not what they call suggestive; right?

12 A. True.

13 Q. When we say suggestive, what we mean is anything
14 that makes a particular, let's say photo display; all right?
15 You are not supposed to do anything that makes a particular
16 photo stand out; is that right?

17 A. True.

18 Q. Because the principle is that you really don't know
19 yourself personally whether or not the person you have as a
20 suspect is actually the person that committed the crime;
21 right?

22 A. True.

23 Q. But they teach you that if you do anything
24 suggestive to make the picture of the suspect stand out - you
25 understand what I'm saying - that that might, in fact,
26 influence the identification by the witness; right?

27 A. (Witness nods his head.)

28 Q. Is that correct?

29 A. True.

1 Q. And if you influence the identification of the
2 witness, they teach you that you might be getting the product
3 of the influence rather than the product of what the witness
4 actually knows; right?

5 A. True.

6 Q. And would it be safe to say that they tell you that
7 when you do the photo display, that all of the photos should
8 be similar or look alike. I don't mean-- let's not talk
9 about the persons in the photos. But for instance, you are
10 not supposed to get a photo, a bunch of photos with dark
11 backgrounds and then put the suspect in a photo with light
12 background.

13 BY MR. EVANS: Your Honor, I object. I have
14 tried not to, but this is on one particular photo
15 lineup. He needs to ask his questions about that
16 photo lineup.

17 **BY THE COURT:** I think that is true.

18 BY MR. LUMUMBA: Okay.

19 BY MR. LUMUMBA:

20 Q. Now but it's true, you are not supposed to--

21 BY MR. EVANS: --I object again, Your Honor.
22 Apparently he didn't hear the Court's ruling.

23 BY MR. LUMUMBA: I am going right to it.

24 **BY THE COURT:** Okay, but I have ruled now.
25 Let's move on.

26 BY MR. LUMUMBA: Okay.

27 BY MR. LUMUMBA:

28 Q. In this particular photo selection, you have one
29 man there who appears to be close up in the photo as opposed

1 to further back in the background; is that correct?

2 A. Not knowing the actual size of these other people,
3 I can't say that that is totally true, but I would admit that
4 Curtis Flowers looks a little larger in that picture if
5 that's what your question is.

6 Q. And it would be safe to say that his head is
7 definitely bigger than anybody else here; is that right?

8 A. (No response).

9 Q. In this photo spread?

10 A. Probably.

11 Q. It would also probably be safe to say that in this
12 photo display he appears to be darker than anybody else here
13 as it appears in this photo spread?

14 A. That is possibly true, but this is a photostatic
15 copy from a copy machine here. This hasn't been presented to
16 Porky Collins by me.

17 Q. Does it appear in this photo display that he
18 appears to be darker than anybody else?

19 BY MR. EVANS: Your Honor, again, he cannot
20 ask him and I object to him asking him about a
21 photocopy of what is darker or lighter.

22 BY THE COURT: I think you ought to refer to
23 the actual photograph.

24 BY MR. LUMUMBA: Okay.

25 Q. What photographs did you show Porky Collins?

26 BY MR. EVANS: And again, Your Honor, for the
27 record the originals of these photographs are in
28 the Supreme Court. All we have before this Court
29 today are copies.

1 BY MR. LUMUMBA: Judge--

2 BY THE COURT: --Let me ask you this because I
3 don't know. Are these photographs that we have
4 here the same photographs that the Supreme Court
5 has?

6 BY MR. EVANS: They are the same photographs
7 but--

8 BY THE COURT: What is the difference?

9 BY MR. EVANS: They are a copy that are made.
10 So whether they are the same darkness or lightness
11 or exact same size, I don't know. And I want this
12 Court to understand that this is strictly a copy.
13 The originals could have been here today, but
14 nobody got them.

15 BY THE COURT: Okay, well.

16 BY MR. LUMUMBA: Well, can I ask a couple of
17 questions? I think it'll clear it up.

18 BY THE COURT: Well. (Pause).

19 BY MR. LUMUMBA: May I state this? We have
20 never, we have asked for discovery. We have asked
21 to see the exact evidence.

22 BY THE COURT: But they don't have that
23 though. It is with the Supreme Court.

24 BY MR. LUMUMBA: He says it could have been
25 here today.

26 BY THE COURT: Well, it could. You could have
27 filed a motion with the Supreme Court and gotten it
28 here.

29 BY MR. LUMUMBA: All right, well, if you

1 recall our last discussion in your presence, they
2 said they were going to file, and they were talking
3 about this hearing.

4 **BY THE COURT:** But my problem right now is
5 that they are not here, so let me think just a
6 minute.

7 BY MR. LUMUMBA: Can I ask one question?

8 **BY THE COURT:** Wait a minute first. Let me
9 think just a second. (Brief pause) What he needs
10 to be asked is if those photographs are
11 substantially the same as the ones that he was
12 shown, that he showed at the lineup, and that's
13 what the issue is. Then I will have to maybe make
14 a ruling after that.

15 BY MR. LUMUMBA: Okay.

16 BY MR. LUMUMBA:

17 Q. Which-- do we have here in front of us the photos
18 which Porky Collins was shown at the lineup?

19 A. I can't swear that these are identical in size or
20 if these are reproductions and do they actually show actual
21 size to scale individuals. You know, I don't know who took
22 the pictures or whatever. But the original photographs were
23 color pictures similar to these.

24 Q. Similar to the ones in the big exhibit?

25 A. Right.

26 Q. Those are similar to the ones that you actually
27 showed to Porky?

28 A. Right.

29 **BY THE COURT:** Okay, let me make this ruling.

1 Of necessity, because I don't have them, I am going
2 to have to make my ruling based on those
3 photographs here today. If this case should go to
4 the Supreme Court, I direct that the photographs
5 that were actually submitted that are now at the
6 Supreme Court be a part, they be made a part of the
7 record in this case so that the Supreme Court will
8 have the actual ones. They will have a little bit
9 more benefit than I do, but that's the best I can
10 do.

11 BY MR. LUMUMBA: Now just to be clear--

12 **BY THE COURT:** And this, we are talking about
13 Exhibit 2 here.

14 BY MR. LUMUMBA:

15 Q. Exhibit 2 in the manila folder; right? And the
16 ones which are similar to the ones that he actually saw on
17 that day?

18 A. Correct.

19 Q. Exhibit 2, which is the 8 1/2 by 11 sheet, the
20 copy; right?

21 A. Correct.

22 Q. Is similar to what you had with you in your
23 possession when you went by to see Porky Collins?

24 A. Right. Sure.

25 Q. Looking at these two representations of Exhibit 2,
26 you have no difficulty -- first of all, the same number is
27 under Curtis Flowers in this copy of the exhibit that is
28 under him in this copy; is that correct?

29 A. Correct.

1 Q. Everybody else here is arranged in the exact same
2 order on both of these copies?

3 A. Correct.

4 Q. It's no difficulty ascertaining by looking at these
5 that the persons situated in these positions on one copy are
6 the exact same persons situated in the same positions on the
7 other copy; right?

8 A. They appear to be; yes.

9 Q. And looking at this exhibit that was shown to Porky
10 on the day or a similar copy of it, it is also clear here
11 that the head of Curtis Flowers is a lot larger than the head
12 of Mr., than anybody else on here; right?

13 A. Probably so.

14 **BY THE COURT:** Let me ask a question. Is it
15 significant or relevant at all as to what any of
16 these witnesses think in that regard, other than
17 maybe Porky Collins, since in the ultimate long
18 run, I have got to be the one to examine the
19 photographs and make that decision regardless of
20 what his opinion is and then ultimately, if it goes
21 to the Supreme Court, they have to do the same
22 thing? So his opinion as to whether they differ,
23 does it make any difference?

24 BY MR. LUMUMBA: Yeah, I would argue in two
25 regards, Judge. Excuse me. I would argue in two
26 regards. One, it deals with the question of
27 whether objectively, they place people in the
28 lineup in a way which was suggestive to the
29 witness. That is number one.

1 BY MR. EVANS: Your Honor, he can simply ask
2 him--

3 BY THE COURT: --Let him finish--

4 BY MR. EVANS: --that question.

5 BY THE COURT: Let him finish, and I will let
6 you-- Go ahead.

7 BY MR. LUMUMBA: And I should be allowed to
8 approach that not just by asking that directly, but
9 by breaking down the photos to show it. Secondly,
10 tests have been done and included in the appendix
11 of some of the cases which indicate that very often
12 a witness is influenced by something which is
13 different about the witness-- about the suspect
14 which is not in his conscious mind, that most
15 misidentifications are based upon subconscious
16 factors as opposed to conscious factors.

17 So any difference which appears-- and I
18 appreciate that the Court can look at it, and I
19 think that is good, and the reason it's good is
20 because if I say something, if the witness says
21 something which is obviously not true about those
22 photographs, and I'm not talking about whether the
23 Court can disagree with the witness or that kind of
24 thing. That is not what I'm trying. If he says
25 something that is obviously untrue about the way
26 that those things are depicted, then the Court can
27 take that into consideration. If he says something
28 which is different about the depiction that I bring
29 out and the Court doesn't think it's that relevant,

1 then the Court can also take that into
2 consideration. But this is my only way of pointing
3 out to the Court what dissimilarities and
4 similarities exist in a lineup which we know that
5 all the suspects must all be displayed, are
6 supposed to have similar characteristics. That is,
7 I mean that is true. Everybody should have similar
8 characteristics, or they shouldn't be in there.

9 So I don't want to belabor this, but there is
10 just a couple of other questions. This is the only
11 lineup that we are dealing with, and I would like
12 to ask this witness, and the Court can certainly
13 come to his own conclusion.

14 BY MR. HORAN: Your Honor, you know, if Mr.
15 Johnson - and I'm certainly not admitting that he
16 did that, but if he intentionally put a photograph
17 in there that was suggestive, that doesn't make any
18 difference what his intent was. It's whether or
19 not when the Court looks at the photograph array
20 and when the Supreme Court looks at the photograph
21 array, whether they say that it is suggestive under
22 the existing case law. The photographic array of
23 pictures speaks for itself.

24 Mr. Johnson's display of it is done once Porky
25 Collins looks at it. And the question turns not on
26 whether or not Mr. Johnson thinks that the head is
27 bigger or that there is pony tails or one of them
28 has a mustache. That doesn't make any difference.
29 Once he makes the photographs available to Porky

1 Collins, he can't change what he has laid out in
2 front of him. All these questions don't mean
3 anything. Mr. Johnson's mind set means absolutely
4 nothing. It's whether or not the photograph array
5 of pictures, I mean the array of photographs is
6 suggestive in and of itself. And is there any
7 other inquiry that the Court has to look into when
8 they are trying to suppress an identification? I
9 don't know what it is.

10 BY MR. LUMUMBA: He had a description in his
11 possession at the time that he put these
12 photographs together. One of the things that the
13 case law talks about is whether the people in this
14 display meet that description so, and whether the
15 alleged suspect meets that description. So I think
16 all these are factors to be balanced, and I think
17 these are questions which are customarily asked on
18 a regular basis at these kind of hearings.

19 BY THE COURT: I think you have done that
20 though, Mr. Lumumba. You put Mr. Collins on, and
21 he testified as to what his preliminary report was
22 to the officers as to what their description was,
23 and then this officer has testified, I guess, that
24 these are substantially the same pictures that he
25 was presented. You have gotten those facts before
26 the Court. Now it's just-- regardless of what Mr.
27 Johnson thinks about it or you think about it or
28 Mr. Horan thinks about it, it's up to me to decide
29 whether I think it is constitutionally imperfect.

1 So I think you have established what you are
2 trying to establish as far as getting it before the
3 Court. And I think you did that with Mr. Collins,
4 and I think you have done it with Mr. Johnson.

5 BY MR. LUMUMBA: Okay.

6 BY THE COURT: I don't want to limit you, but
7 you have given me the information I need, I think.

8 BY MR. LUMUMBA: Okay. Well, can I ask just a
9 couple of other questions, and I will move on?

10 BY THE COURT: Yes, sir. If you will keep it
11 to two.

12 BY MR. LUMUMBA:

13 Q. How many people in this photo display appear to be
14 over 30?

15 A. I couldn't answer that. I couldn't-- by looking at
16 that, I can't tell you their age.

17 Q. Can you tell me--

18 A. I would say that they are close to the same age,
19 but I can't tell you how old they are by looking at those
20 pictures.

21 Q. Who appears to be the oldest person in this
22 display?

23 A. (Pause) I can't; I would just be guessing, and I'm
24 not qualified to do that.

25 Q. I just want you to understand the question.

26 A. I understood your question.

27 BY MR. EVANS: I think that is two questions,
28 Your Honor.

29 BY MR. LUMUMBA: No, no. You don't understand

1 the question.

2 Q. I'm not asking you who is the oldest. I am asking
3 you who appears to be oldest based upon this display?

4 A. Based on that display, I don't think I can make
5 that determination.

6 Q. Okay, well, let's go to another question. Do you
7 have information on the persons that you put in that
8 display? In other words, do you know their names and other
9 information on them, about their vital statistics?

10 A. I don't have any names or vital statistics on those
11 individuals, but I didn't put them in that display.

12 Q. Who put them there?

13 A. That was prepared by the Highway Patrol.

14 Q. And do they have that information?

15 A. I couldn't answer that question.

16 Q. And who prepared it?

17 A. I couldn't answer that question. I know that Mr.
18 Miller had that in his possession.

19 Q. Okay. Did you show Mr. Collins a picture of Mr.
20 Doyle Simpson?

21 A. When?

22 Q. On the day--

23 A. --initially? When this lineup, a similar, the
24 original lineup was shown to Mr. Collins? Is that what you
25 are saying?

26 Q. On the same day that you showed these pictures to
27 him which are in Exhibit 2, did you show him a picture of Mr.
28 Collins [sic]?

29 A. A picture of Mr. Collins?

1 Q. Or a lineup with Mr. Collins. I'm sorry--

2 A. --I don't think Mr.--

3 Q. A lineup with Mr. Doyle Simpson in it?

4 A. No.

5 Q. You never showed him a lineup with Mr. Doyle
6 Simpson in it?

7 A. I did not.

8 Q. I am showing you a sheet of paper and asking you if
9 you can identify it?

10 BY MR. HORAN: Your Honor, could it be marked
11 for identification purposes, please?

12 BY THE COURT: Yeah, let's do that.

13 BY MR. LUMUMBA: I will have to copy this too
14 later on.

15 (HANDWRITTEN NOTES CONCERNING INTERVIEW WITH
16 MR. COLLINS WERE MARKED AS DEFENDANT'S EXHIBIT D-3
17 FOR IDENTIFICATION TO THE MOTION TO SUPPRESS
18 IDENTIFICATION.)

19 (Exhibit D-3 ident. handed to the witness.)

20 BY MR. LUMUMBA:

21 Q. Do you recognize that exhibit which now is marked
22 as number 3?

23 A. I do.

24 Q. What is that?

25 A. This is some original notes that I had that I made
26 on the date that Mr. Collins was shown a picture lineup.
27 This is back on 8/24 of '96 looks like it is dated.

28 Q. Was he shown a lineup of Mr. Doyle Simpson?

29 A. Yes.

1 Q. And was the pictures that he was shown of Doyle
2 Simpson, were they in black and white or color?

3 A. I believe they were color like these.

4 Q. When is the last time you saw a copy of those
5 pictures?

6 A. I can't recall really. I don't remember exactly.

7 Q. Did you take a copy of those pictures with you when
8 you went over to Porky Collins' house?

9 A. No, I didn't.

10 Q. Did you take a copy of any other pictures with you?

11 A. No.

12 Q. When you went over to Porky Collins' house?

13 A. No.

14 Q. Is it true that in your experience in setting up a
15 lineup, do you attempt to get people in the lineup with
16 similar characteristics?

17 BY MR. EVANS: Your Honor, this has been
18 covered several times. I object.

19 BY MR. LUMUMBA: I haven't asked him that
20 question.

21 BY THE COURT: What question was it? State
22 that question again.

23 BY MR. LUMUMBA:

24 Q. Is it true that in setting up a lineup, that you
25 attempt to get people in it with similar characteristics?

26 BY THE COURT: But I have held that that is
27 not relevant. The question is whether or not that
28 was done in this case.

29 BY MR. LUMUMBA: So you are saying it is not

1 relevant to this hearing?

2 **BY THE COURT:** Well, that is all that is
3 before me is at this hearing; yes, sir. Yeah, I'm
4 not excluding it down the road.

5 BY MR. LUMUMBA: Okay.

6 BY MR. LUMUMBA:

7 Q. Okay, now when you brought-- or did you tape, did
8 you audio tape or videotape Mr. Collins when you talked to
9 him on the day that he looked at these photographs?

10 A. On that day, 8-24-96?

11 Q. Yeah.

12 A. I don't believe I did. Well, wait a minute. I
13 will have to look at the notes on that. 8-24-96; probably
14 so.

15 Q. What notes do you need to look at? I will be glad
16 to show you.

17 A. Well, in the statements that you should have a
18 copy; if I took a statement from Porky Collins, it will be
19 dated and timed.

20 Q. Did you tape him more than once or just once?

21 A. Repeat that.

22 Q. Did you tape Mr. Collins more than once or just
23 once in all the times that you talked to him?

24 A. I have taped him twice.

25 (STATEMENT OF PORKY COLLINS WAS MARKED AS
26 DEFENDANT'S EXHIBIT D-4 FOR IDENTIFICATION TO THE
27 MOTION TO SUPPRESS IDENTIFICATION.)

28 BY MR. LUMUMBA:

29 Q. Do you recognize what has been marked as Exhibit

1 number 4?

2 A. I do.

3 Q. What is that?

4 A. It's a statement of Porky Collins made March 10,
5 '97.

6 Q. Was that taped?

7 A. Yes, it was.

8 Q. And March 10th, '97 is not the date he was shown
9 the pictures; right? He was shown the pictures on 8-24-96;
10 is that right?

11 A. 8-24-96.

12 Q. Right.

13 A. So now--

14 Q. Now do you have any other statement of Porky
15 Collins which is taped other than that statement?

16 A. Yeah, on 8-24-96. I think there may be a--

17 Q. You do?

18 A. I'm not sure. I think maybe there was one.

19 Q. Well, let me ask you this. Did you see a copy of a
20 subpoena when you came here to testify, before coming here to
21 testify?

22 A. No, I didn't look at it, but I knew you had one.

23 Q. You never looked at it?

24 A. Yeah.

25 Q. You never looked at it?

26 A. No, I never looked at it.

27 Q. So you never read here where it says to bring all
28 information related to procedures that were used by Porky
29 Collins to identify Flowers and Doyle Simpson, the photo

1 lineup?

2 A. No, I didn't read that, but I am sure it is there.

3 Q. Okay. Well, how did you know about it?

4 A. One of the girls in the office told me that it was
5 sent in there.

6 BY MR. EVANS: Your Honor, for the record, Mr.
7 Johnson was not served a copy of that, but out of
8 courtesy to the Court, we brought statements. But
9 Mr. Johnson was never served a copy of that.

10 BY THE COURT: Well, I assume the question is
11 was there a transcript of the second tape.

12 BY MR. EVANS: We only know of one tape that
13 was taken, Your Honor. And we have the tapes and
14 the copies here as we have sat down on two
15 different occasions--

16 BY THE COURT: --I understand all that.

17 BY MR. EVANS: --and gone over with opposing
18 counsel.

19 BY THE COURT: But as far as you know, there
20 was just this March.

21 BY MR. EVANS: Just one is the only one that
22 we are familiar with.

23 BY THE COURT: Okay.

24 BY MR. LUMUMBA: Judge, I certainly have never
25 seen another-- I have never seen a copy of any tape
26 other than that one.

27 BY MR. JOHNSON:

28 A. I can see here that the information that you were
29 asking about is in this statement.

1 Q. All right. Well, do you have a tape-- that was
2 taped in '97; right?

3 A. March 10, '97. Yes.

4 Q. Do you have a tape or was there a tape made of 8-24
5 of '96?

6 A. If it was, you know-- it would be, you would have
7 it if there was such a tape. I made notes here, and that may
8 be what I am referring to here, of Wayne Miller was present.
9 I made these notes. I went back and asked him to make a
10 statement in regard to the overall interest of the case, and
11 that was the purpose of this tape.

12 Q. And that was done in '97?

13 A. It was.

14 Q. So you never taped him in '96; is that right?

15 A. Apparently not.

16 Q. You talked to Mr. Collins on several occasions
17 prior to August of '96 or prior to the day that you showed
18 him the photographs; is that correct?

19 A. Repeat your question.

20 Q. Is it not a fact that you talked to Mr. Collins on
21 several occasions prior to the time that you showed him the
22 photograph?

23 A. Sure.

24 Q. All right. And when you talked to him on those
25 occasions, did you ever tape anything that he said about this
26 case?

27 A. No.

28 Q. And now when you, when he came in -- where was he
29 at when you showed him the photographs on August the 24th of

1 '96?

2 A. Inside the DA's office in the Police Department of
3 Winona, Mississippi.

4 Q. Inside of the DA's office?

5 A. Uh-hum.

6 Q. And the Police Department?

7 A. That's right.

8 Q. Is that two different places or the same place?

9 A. The same.

10 Q. All right. Did he come down on his own, or did you
11 go get him?

12 A. I don't remember that.

13 Q. How did he get down there? Did you call him, or
14 did he-- somebody else call him?

15 A. I don't know who called him. I may have called
16 him.

17 Q. So you talked to him?

18 A. I did talk to him on that day, yes.

19 Q. Before he came?

20 A. I don't know about that.

21 Q. Who notified him that you wanted him to be there?

22 A. I don't remember that.

23 Q. You don't know?

24 A. Uh-uh.

25 Q. Do you recall any conversations that you had with
26 him before he saw the photographs?

27 A. No.

28 Q. Did you indicate to him at some point that you
29 wanted him to look at the photographs in order to determine,

1 in order to see if he could pick out the person, in order
2 that he could pick out the person who committed this crime?

3 A. Just before he looked at the pictures, yes.

4 Q. So you told him to see if he could look at the
5 photograph and pick out the person who committed this crime;
6 right?

7 A. Yes.

8 Q. And you indicated that there were a number of
9 people in the photographs and to look at all of them; is that
10 right?

11 A. Sure.

12 Q. Thank you.

13 (Pause while Mr. Lumumba confers with Mr.
14 Freelon.)

15 Q. Did you, did you tell him at any time prior to
16 showing him the photographs that you had a suspect?

17 A. No. That wasn't discussed with him.

18 Q. Was it discussed-- who was it discussed with?

19 A. I think I can clarify that with this statement that
20 is over in the back of that statement.

21 Q. No. I am asking you.

22 A. All right, ask me.

23 Q. Who was the fact that you had a suspect discussed
24 with? Was it discussed with any civilian witness?

25 BY MR. EVANS: Your Honor, that is not
26 relevant who he discussed with other than Porky
27 Collins. He is the one who looked at the photo
28 lineup, and whether he talked with me or other
29 investigators or anybody else about who was a

1 suspect is not relevant to this Motion.

2 **BY THE COURT:** It's not relevant unless he
3 made some suggestion that made Porky Collins make
4 that identification.

5 **BY THE WITNESS:**

6 A. There was no suggestion of anything to make him
7 make that selection, no.

8 Q. There were other police officers in the room at the
9 time; is that right?

10 A. No. Well, Wayne Miller with the Highway Patrol was
11 present.

12 Q. How about Mr. Matthews?

13 A. I don't believe he was there.

14 Q. Okay. Did have you a discussion with Mr. Miller
15 about having a suspect?

16 **BY MR. EVANS:** I object unless he specifies
17 whether he is talking about in the presence of Mr.
18 Collins.

19 **BY THE COURT:** Well, yeah. You need to lay
20 that predicate.

21 **BY MR. LUMUMBA:**

22 Q. Did you have any discussion with Mr. Miller in the
23 presence of Mr. Collins?

24 A. No.

25 Q. Pardon?

26 A. No.

27 Q. Did you hear Mr. Miller say anything to Mr. Collins
28 in your presence?

29 A. No.

1 Q. Didn't say anything to him at all?

2 A. Not about Curtis Flowers being a suspect, no.

3 Q. I'm not asking you about Curtis Flowers being a
4 suspect. Did he say anything to him-- well, first of all,
5 did he say anything to him at all at the time of the photo
6 display? Mr. Miller.

7 A. The only conversation was made with Porky was to
8 ask him to tell us what he knew, and then we asked him to
9 look at a photo lineup and see if he could identify the man
10 that he saw in front of Tardy Furniture that morning.

11 Q. To see if he could identify the man he saw in front
12 of Tardy Furniture? Is that what you said?

13 A. We asked him that, yes.

14 Q. Okay. **The** man?

15 A. (Witness nods his head.)

16 Q. Okay. You have got to say yes or no.

17 BY MR. EVANS: What was the comment or
18 question, Your Honor? I didn't hear it.

19 BY MR. LUMUMBA: Well, he has to say yes or
20 no.

21 BY MR. EVANS: Your Honor, I didn't hear the
22 question or comment that was made.

23 **BY THE COURT:** Well, the question--

24 BY MR. LUMUMBA: It was a question.

25 **BY THE COURT:** It was, and I have forgotten.

26 Go ahead.

27 BY MR. LUMUMBA:

28 Q. The question is you asked him to identify the man
29 that he saw in front of the store; right?

1 A. Correct.

2 Q. Okay. Now you did not show Porky Collins any
3 photographs prior on any of the dates that you talked to him
4 prior to 8-24-96; was that right?

5 A. That's correct.

6 Q. Now you are aware, weren't you, that one of the
7 things that is important to identification is how soon the
8 person sees the lineup after the incident; right? You
9 understand that is important?

10 A. I understand that can be a factor, yes.

11 Q. And the longer time it takes, the more chance that
12 they can make a mistake; isn't that correct?

13 A. I think that would depend on the individual and--

14 Q. Well, I know, but you don't, you don't do your work
15 based upon individuals? You--

16 BY MR. EVANS: --Your Honor, this is not
17 relevant.

18 **BY THE COURT:** That is a jury question that
19 you are asking for.

20 BY MR. LUMUMBA:

21 Q. When you talked with Porky Collins on 7-16-96?

22 BY MR. HORAN: Is that an exhibit? Is that
23 marked?

24 BY MR. LUMUMBA: No. Do you want to mark
25 it?

26 (NOTES CONCERNING PORKY COLLINS' STATEMENT
27 WRITTEN ON 7/16/96 WERE MARKED AS DEFENDANT'S
28 EXHIBIT D-5 TO THE MOTION TO SUPPRESS
29 IDENTIFICATION.)

1 BY MR. LUMUMBA:

2 Q. I am showing you D-5. Tell us what that is.

3 A. The basic note I made on the day of the murders,
4 July the 17th-- 16th, '96.

5 Q. Do those notes concern a conversation with someone?

6 A. Yeah, I guess they do, yeah; Porky Collins.

7 Q. Right. And does it indicate whether or not you
8 showed him a photograph display on that day?

9 A. No, it does not.

10 Q. When did the state police become involved in the
11 case?

12 A. Almost immediately.

13 Q. And when is the first time you asked them to make
14 up a photo spread for Porky Collins?

15 A. We worked jointly involved in this investigation,
16 and I don't know that I particularly asked him to do that,
17 but it was discussed and Mr. Miller furnished one.

18 Q. Do you remember when it was first discussed about a
19 photo spread?

20 BY MR. HORAN: Your Honor, is that relevant to
21 anything as far as Mr. Collins' identification?
22 When they discussed when they wanted the photo
23 lineup?

24 BY THE COURT: It's really not. Let's move
25 on. I think we have pretty well covered this
26 subject with both of these witnesses.

27 BY MR. LUMUMBA: All right. I don't have any
28 further questions.

29 BY THE COURT: How long are you going to be,

1 Mr. Evans?

2 BY MR. EVANS: Brief.

3 BY THE COURT: Okay. I asked Mr. Freelon
4 that, and I didn't get a straight answer.

5 BY MR. EVANS: Of course, if the Court would
6 like to take a break--

7 BY THE COURT: --I'm not going to ask him to
8 estimate time any more.

9 BY MR. EVANS: If the Court would like to take
10 a break, I am definitely ready for one.

11 BY THE COURT: Okay, let's take about ten
12 minutes.

13 (FOLLOWING THE AFTERNOON RECESS ON 1/6/99,
14 PROCEEDINGS CONTINUED IN OPEN COURT WITH THE COURT,
15 ALL COUNSEL, AND THE DEFENDANT PRESENT AND WITH MR.
16 JOHN JOHNSON STILL ON THE STAND:)

17 BY MR. LUMUMBA: Judge, can I ask the witness
18 a couple of short questions?

19 BY THE COURT: Okay. All right, make it two;
20 okay?

21 BY MR. LUMUMBA: All right.

22 CONTINUED DIRECT EXAMINATION BY MR. LUMUMBA:

23 Q. One question is when you went to visit Mr. Porky
24 Collins a couple of days ago as you said, were you by
25 yourself, or was anyone else with you?

26 A. I was by myself.

27 Q. Focusing on Exhibit 5--

28 A. Do what now?

29 Q. Focusing on Exhibit 5, pointing you to the

1 description that was given by Mr. Collins--

2 BY MR. EVANS: I can't hear, Your Honor.

3 BY MR. LUMUMBA: I'm sorry.

4 BY THE COURT: I think that is as loud as he
5 can talk. I think he said, "Focusing on Exhibit
6 5," and in that about the description that Mr.
7 Collins gave to, I assume, Mr. Johnson; is that
8 right?

9 BY MR. LUMUMBA: Right. Right.

10 BY THE COURT: Okay.

11 BY MR. LUMUMBA:

12 Q. Did you write down precisely the description that
13 Mr. Collins gave you?

14 A. No, I don't think it was precise, but I wrote down
15 roughly what he told me.

16 Q. What was the difference?

17 A. He indicated one man was taller than the other. He
18 indicated that-- you know, that is basically all he told us
19 that day.

20 Q. Did he tell you, did he tell you both men had
21 medium, both were black men and they had medium complexions?

22 A. That is true. I wrote that down.

23 Q. And did he say that precisely?

24 A. Yes, he said that.

25 BY THE COURT: Can I see that? Is that in
26 evidence?

27 BY MR. HORAN: Identified.

28 BY THE COURT: I move to admit them.

29 BY THE WITNESS: This was a--

1 **BY THE COURT:** --Wait a minute, Mr. Johnson.

2 **BY THE WITNESS:** I'm sorry.

3 **BY MR. EVANS:** I don't even know what it is,
4 Your Honor.

5 **BY THE COURT:** It's his notes.

6 **BY MR. LUMUMBA:** I would move to admit all the
7 exhibits that I marked. Those would be Exhibits 1
8 through 5.

9 **BY THE COURT:** Some of them are already in.
10 Some of them are just marked for identification.

11 **BY MR. LUMUMBA:** Right. I would move to admit
12 all of them for the purposes of this hearing, 1
13 through 5.

14 **BY MR. EVANS:** I don't have any objection to
15 this one. I want to see which other ones you are
16 talking about.

17 **BY THE COURT:** Linda, hand me that one that he
18 put on the table.

19 (Exhibit D-5 handed to the Court.)

20 **BY THE COURT:** Okay.

21 **BY MR. EVANS:** All right, so we are talking
22 about-- what number did you have?

23 **BY THE COURT:** It's back down there. Those
24 two copies are already admitted. The copies of the
25 photographs are already admitted. Everything else
26 is admitted for identification, I think.

27 **BY MR. LUMUMBA:** Can I make a request?

28 **BY THE COURT:** Uh-hum.

29 **BY MR. LUMUMBA:** Run off a copy of this.

1 **BY THE COURT:** Of that one?

2 BY MR. LUMUMBA: Yeah.

3 **BY THE COURT:** Yeah. We will put--

4 BY MR. LUMUMBA: And put that in. Is that
5 okay?

6 **BY THE COURT:** Yeah, and then he can have that
7 one back.

8 BY MR. LUMUMBA: Okay.

9 **BY THE COURT:** Right. That will be a good
10 deal.

11 BY MR. EVANS: Your Honor, also the back is
12 going to need to be run on this.

13 **BY THE COURT:** That would be okay.

14 BY MR. LUMUMBA: I would like to substitute
15 this or make this the exhibit.

16 BY MR. EVANS: I don't have any objection to
17 that.

18 BY MR. LUMUMBA: 2A, because we talked about
19 both of them. It would be kind of difficult.

20 **BY THE COURT:** Okay. Will somebody go make me
21 a copy of that real quick? Let's get that done.

22 BY MR. LUMUMBA: Do you want me to do it now?

23 **BY THE COURT:** If you don't mind.

24 BY MR. LUMUMBA: Okay. Fine.

25 (After Counsel returned from making a copy,
26 Mr. Horan looked at the copy and determined that
27 the back of it was turned wrong and needed to be
28 restapled.)

29 BY MR. EVANS: Is the copy on the back of it?

1 BY MR. HORAN: I turned it around. Let me
2 see. That is wrong.

3 BY MR. EVANS: That is not right. Are we just
4 going to swap and put it on the correct exhibit
5 numbers, or are we going to redo the numbers?

6 BY MR. LUMUMBA: Maybe we can just put them
7 together as a composite Exhibit 2.

8 BY THE COURT: That will work.

9 BY MR. EVANS: And that exhibit is already in
10 evidence; is that right?

11 BY THE COURT: This?

12 BY MR. EVANS: Yes, sir.

13 BY THE COURT: It hasn't been, but he is
14 asking that it be admitted and I--

15 BY MR. EVANS: No objection. No objection to
16 D-1 being in evidence. No objection to D-4 being
17 in evidence. No objection to D-3 being in
18 evidence.

19 BY THE COURT: And they are all marked now,
20 aren't they? Linda, have you marked them all?

21 BY THE COURT REPORTER: Not those.

22 (WHEREUPON, THE NOTES CONCERNING CHARLES
23 "PORKY" COLLINS PREVIOUSLY MARKED AS DEFENDANT'S
24 EXHIBIT D-3, THE STATEMENT OF PORKY COLLINS
25 PREVIOUSLY MARKED AS DEFENDANT'S EXHIBIT D-4, AND
26 THE NOTES MADE ON 7/16/96 CONCERNING MR. COLLINS'
27 STATEMENT MARKED AS EXHIBIT D-5 WHICH WERE EACH
28 PREVIOUSLY MARKED FOR IDENTIFICATION TO THIS MOTION
29 WERE NOW RECEIVED IN EVIDENCE. THE NEW COPY OF THE

1 PHOTO LINEUP THAT WAS JUST RUN OFF WAS ATTACHED TO
2 DEFENDANT'S EXHIBIT D-2 MAKING IT A COMPOSITE
3 EXHIBIT D-2.)

4 **BY THE COURT:** Mr. Lumumba, are you through?

5 BY MR. LUMUMBA: Yes.

6 CROSS-EXAMINATION BY MR. EVANS: (SPECIFIED BY THE COURT AS
7 NOT ABLE TO ASK LEADING QUESTIONS).

8 Q. Mr. Johnson, on the day that these murders occurred
9 in Winona, I believe Mr. Collins came to law enforcement
10 officials and volunteered that he had seen something down
11 there; is that correct?

12 A. That's correct.

13 Q. I think that initial day he said he saw the face of
14 one of the two people standing in front of the store; is that
15 right?

16 A. That's true.

17 BY MR. LUMUMBA: Can I raise an objection,
18 please? I object to the leading nature of the
19 questions.

20 BY MR. EVANS: No, this is cross-examination.

21 **BY THE COURT:** Oh, he would have to be
22 classified as your witness.

23 BY MR. EVANS: On cross-examination? It can't
24 be my witness on cross-examination. Cross-
25 examination is clear.

26 **BY THE COURT:** That's right, but he is your
27 witness, and that makes him a hostile witness-- I
28 mean--

29 BY MR. EVANS: --It doesn't matter if he is

1 hostile. All that means is that they can get, use
2 direct questioning which I did not object to.

3 **BY THE COURT:** You can't lead him. You are
4 going to have to not lead him.

5 **BY MR. EVANS:** Your Honor, under what rule?

6 **BY THE COURT:** Under the rule that he is your
7 witness, regardless of whether he is up here after
8 he testifies or not. He has got him on cross. He
9 is your witness. He is called-- he would be
10 adverse to him where he could lead him with
11 questions, but you can't.

12 **BY MR. EVANS:** Under that theory, he could
13 call any witness he wanted to, and I couldn't
14 cross-examine--

15 **BY THE COURT:** --Well, that is my ruling, so
16 just ask him a question.

17 **BY MR. EVANS:**

18 Q. Mr. Johnson, let's just go through it step by step
19 then. Do you remember the day that you went to Tardy
20 Furniture?

21 A. The day of the murders; yes, sir.

22 Q. Do you remember approximately what time that day
23 you saw Charles "Porky" Collins?

24 A. I don't remember the exact time, but I would say,
25 I'm going to guess at approximately 12:30. It would have
26 been-- I don't remember the exact time.

27 Q. Do you remember basically what he said at that
28 time?

29 A. Basically, that he had seen two individuals in the

1 median area of Front Street, the median in front of Tardy
2 Furniture store; that one of them he indicated had rounded
3 features, his face. He estimated his height at 5 foot 10, I
4 think. He indicated they were standing near a car, but one
5 of the individuals had his head turned to him, and he didn't
6 get a good identification on him. He said he may could
7 identify one of the individuals.

8 Q. And what was that based on?

9 A. Just based on the description or the view that he
10 got of that person in front of Tardy's that morning.

11 Q. All right. We have seen two different photo line-
12 ups that were shown; is that correct?

13 A. Yes, sir.

14 Q. All right. And in evidence is the statement that
15 you took from Mr. Collins; is that correct?

16 A. There is a statement in there; yes, sir. I did
17 take that.

18 Q. Let me hand it back to you, Exhibit D-4?

19 A. (Pause while witness looks at exhibit.)

20 Q. Have you had an occasion today to go back through
21 that statement?

22 A. I haven't read it in detail, but I am basically
23 familiar with it.

24 Q. On the day that the photo lineup was shown to Mr.
25 Collins, who was present?

26 A. Myself and Wayne Miller, Captain with the Highway
27 Patrol.

28 Q. Where was this lineup shown?

29 A. In the District Attorney's Office in the rear of

1 the Winona Police Department.

2 Q. Did you or what, if anything, did you or Wayne
3 Miller or anyone else do to influence Charles "Porky" Collins
4 on who to pick out in the lineup?

5 A. There wasn't any influence, conversation to ask him
6 to pick anyone out other than we asked him to see if he could
7 identify the person he saw in front of Tardy's that morning.

8 Q. And how many different photos spreads was he shown
9 that day?

10 A. Two.

11 Q. And after he had been asked to see if he could
12 identify the person he saw, in the first photo spread did he
13 identify anybody?

14 A. No.

15 Q. In the second photo spread, did he identify
16 anybody?

17 A. Yes.

18 Q. I will hand you the copy that has been made of the
19 second photo spread, which is D-1. This is the color copy.
20 I will first ask you if that is substantially the same as the
21 one that was shown to him that day?

22 A. Yes.

23 BY MR. LUMUMBA: May I see that, please. I
24 haven't seen it.

25 BY THE COURT: This? Yes, sir. You have seen
26 that.

27 BY MR. EVANS: If he hasn't, something is
28 wrong.

29 BY THE COURT: You have seen all of them.

1 BY MR. LUMUMBA: He said D-1. Maybe he meant
2 D-2.

3 BY THE COURT: Of that?

4 BY MR. LUMUMBA: Yeah.

5 BY THE COURT: You can look at it, but you
6 have seen it. You are the one got it up there.

7 BY MR. LUMUMBA: Okay, I'm sorry. He used--
8 what I'm saying that is confusing me, he used the
9 number D-1. For the record, that is actually D-2.
10 Remember, Judge--

11 BY THE COURT: --Well, it was Exhibit number
12 2.

13 BY MR. LUMUMBA: Right.

14 BY THE COURT: It was Exhibit number 2.

15 BY MR. LUMUMBA: Yeah, I was just correcting
16 that; I'm sorry.

17 BY MR. EVANS:

18 Q. All right, but you have seen that exhibit; is that
19 correct?

20 A. This one or one similar, yes, sir.

21 Q. All right. And the original of that exhibit, who
22 did you say prepared it?

23 A. Wayne Miller with the Highway Patrol. He furnished
24 it; I assume he prepared it.

25 Q. Are you familiar with how long it was after this
26 crime occurred before you or Mr. Miller were able to come up
27 with a photograph of the Defendant?

28 A. I don't remember the exact time, but it was, it
29 wasn't immediate. I mean it took some days to get it.

1 Q. Okay, to your knowledge did anyone have a
2 photograph that could be used in a lineup the day of the
3 crimes?

4 A. Not that I'm aware of.

5 Q. In this photo spread, I would like for you to look
6 at it. As far as the parts of the body that are shown in
7 there, are any of those any different?

8 A. I think they have the basic facial features.

9 Q. None of them are full body shots and some head
10 shots; is that correct?

11 A. That's correct.

12 Q. Are all of those people used in those photographs
13 as far as it appears basically the same age?

14 A. They look to be approximately the same age.

15 Q. Are all those people in those photographs black
16 males?

17 A. They are all black males, or appear to be.

18 Q. And is there anything that points out any
19 particular person in that lineup?

20 A. Not that, not to me.

21 Q. Was the Defendant used as number one?

22 A. No.

23 Q. What number was he in that lineup?

24 BY MR. LUMUMBA: Judge, I would have to raise
25 the same objections that were raised to my
26 questions.

27 BY MR. EVANS: Your Honor, the Court let him
28 go deep into this. I just want to go briefly in it
29 to make sure there is a clear record.

1 BY MR. LUMUMBA: Well, that is my objection.

2 BY THE COURT: Okay. Your objection is
3 overruled.

4 BY MR. LUMUMBA: All right.

5 BY MR. EVANS:

6 Q. What number is the Defendant?

7 A. Four.

8 Q. When the second photo lineup that included the
9 photograph of Curtis Flowers was shown to Mr. Collins, what
10 was Mr. Collins' reaction?

11 A. Can I refer to this?

12 Q. Yes, sir.

13 A. To be-- he pointed to number four and said, "I
14 think that is him. He was about my height. I am 5 foot 10.
15 Complexion is also right. I believe that's him. It looks
16 like him." And after he made the identification, I asked him
17 the question, "Do you know Curtis Flowers?" He said, "I
18 didn't know Curtis Flowers then. I don't know Curtis Flowers
19 now." And he went on to say that the man, "The picture that
20 I picked out in that lineup right there was the man that I
21 seen in front of Tardy Furniture Company that day."

22 Q. Okay, and that is in the statement that he gave
23 you; is that correct?

24 A. It is. It's recorded.

25 Q. Did you or Wayne Miller or anyone else tell him to
26 say that?

27 A. Absolutely not.

28 Q. Did anyone in any form or fashion even hint to him
29 who he should pick out in any way?

1 A. No, sir.

2 Q. Was there any hesitance in him when he saw the
3 second lineup in pointing to the Defendant's picture?

4 A. No, sir.

5 Q. You have been asked about the date on this being
6 March 10th, '97, being some time after the initial interview
7 with Mr. Collins. Is this statement substantially the same
8 as what he told you he saw happen on that day?

9 A. It is.

10 Q. Do you remember approximately-- now I'm not trying
11 to be exact, but approximately how long after the call came
12 in that the people were killed before Mr. Collins told you
13 what he told?

14 A. If I could, I don't know if-- in my notes I should
15 have the time, but it would have been a short time. As soon
16 as he heard about what had happened, he came to Tardy
17 Furniture store and volunteered that information to us on the
18 chance that it would be helpful.

19 Q. Would you say that it would be probably more or
20 less than two hours?

21 A. I'm going to say less.

22 Q. Now for the record on this, I want you to describe
23 the front of Tardy Furniture and the road there in front of
24 Tardy Furniture.

25 A. Tardy Furniture was located on the south end of
26 Front Street, downtown Winona. Like most small towns, this,
27 the store fronts face the railroad track. In the middle in
28 front of the store there was a sidewalk and a small median
29 that used to have parking meters and allowed parking both

1 diagonally in front of the store and in the median on both
2 sides, and also some parking next to the railroad when it was
3 available.

4 Q. All right. Did Mr. Collins tell you in which
5 direction he was driving when he saw this person's face?

6 A. As I remember it, Mr. Collins indicated he came
7 down south Front Street, saw the individual, and turned and
8 it got his attention, and he noticed the people as he went
9 back up the street. So to exact angles, I don't know. I
10 know that one individual he did not get a good facial view,
11 but on one he did.

12 Q. All right. I show you Exhibits D-1 and D-2.

13 A. Okay.

14 Q. How many photographs are there on those two
15 exhibits?

16 A. Six each.

17 Q. For a total of twelve?

18 A. Yes, sir.

19 Q. When you talked with Mr. Collins - and I am
20 referring to both right after the crime occurred and at the
21 time that this statement was taken - what was his abilities
22 to recall?

23 A. I thought they were extremely good to detail. You
24 know, he described Ms. Rigby's flipping of the keys--

25 BY MR. LUMUMBA: --Objection.

26 A. --her hair.

27 BY MR. LUMUMBA: Objection.

28 BY MR. EVANS: Wait until the Court rules.

29 BY MR. LUMUMBA: Objection. I believe that it

1 would be impossible for him to sit up here, even if
2 he was an expert, to say that his ability to recall
3 is good. I don't have a problem with him asking
4 what kind of detail he gave him. But that calls
5 for a conclusion which he is not competent to make.
6 First of all, it calls for a conclusion that what
7 he was telling him is actually a recall of what Mr.
8 Collins saw, and I don't think he can make that
9 conclusion. I don't have any problem with him
10 talking about what kind of detail Mr. Collins gave
11 him, so that's my objection. I don't think-- it
12 calls for an opinion which this witness is not
13 competent to make. In fact, no witness is
14 competent to make except Mr. Collins himself.

15 BY MR. EVANS: Your Honor, in response, he has
16 definitely attempted to impeach Mr. Collins on his
17 ability to remember. What I am asking specifically
18 of Mr. Johnson, and he does have the ability to
19 answer this in his opinion; he talked with the
20 witness very briefly after the crime was committed,
21 within two hours. He talked with him again and
22 took a statement on March 10th, 1997, and if these
23 facts that he gave on those two occasions are the
24 same, then his ability to recall is very good. And
25 that's what I am asking.

26 BY MR. LUMUMBA: Well--

27 BY THE COURT: Well, I am ready to rule on
28 this. I take that to be a lay opinion which he is
29 entitled to make, and he can give his opinion.

1 BY MR. EVANS: All right.

2 BY THE WITNESS:

3 A. I think he was very accurate and very descriptive.

4 Q. And Mr. Johnson, to make my question a little
5 broader, I have asked you already about whether anyone
6 attempted to influence Mr. Collins in the photo lineup. Mr.
7 Collins has testified in the previous trial too; is that
8 correct?

9 A. He has.

10 Q. And he has testified here today too; is that right?

11 A. That's correct.

12 Q. Has anybody ever tried to tell him who committed
13 this crime?

14 A. Absolutely not.

15 Q. Has anybody ever tried to tell him what person to
16 identify?

17 A. No.

18 BY MR. EVANS: One moment, Your Honor. That's
19 all, Your Honor.

20 BY MR. LUMUMBA: I just have a couple.

21 REDIRECT EXAMINATION BY MR. LUMUMBA:

22 Q. Mr. Johnson, if I understood it correctly, that
23 when you saw Mr. Collins at this time that you said his
24 recall was perfect. You did take down--

25 A. I don't--

26 Q. I'm sorry. You are shaking your head no. I don't
27 want to say anything that is incorrect?

28 A. Go ahead, sir.

29 Q. What you said, you were impressed by his ability to

1 recall?

2 A. I was.

3 Q. Now at the time that you were talking to them, you
4 were also taking down notes of what he was saying?

5 A. I was.

6 Q. And you are a trained police officer, trained in
7 the art of taking notes of what witnesses tell you?

8 A. True.

9 Q. And you know that it's important when you are a
10 police officer to take down as closely as possible precisely
11 what they tell you when they tell it to you; right?

12 A. It's important; yes, sir.

13 Q. And the reason it's important-- well, first of all,
14 this was a-- this case you were investigating couldn't be any
15 more serious. Not only was it a case that you were
16 investigating and taking down notes on witnesses, but it was
17 a capital murder case; right? Well, it was a murder case.
18 Somebody had been killed; right?

19 A. Four people, yes.

20 Q. Yes. So this was an extremely important case that
21 you were investigating; right?

22 A. Sure.

23 Q. And as an officer, you have been trained that it is
24 extremely important to take down what witnesses tell you
25 about the description of the person who could have been
26 involved with the crime; right?

27 A. Sure.

28 Q. And so if the witness tells you something about
29 that person, you write it down; right?

1 A. Not all the time.

2 Q. Well, let me understand this. If a witness tells--
3 you sometimes tape it; right?

4 A. Sometimes.

5 Q. Did you tape it on 7-16-96?

6 A. No.

7 Q. You sometimes take a videotape?

8 A. Sometimes.

9 Q. Did you take a videotape on 7-16-96?

10 A. No.

11 BY MR. EVANS: Your Honor, this is improper
12 redirect.

13 BY THE COURT: It really is. It is improper
14 redirect.

15 BY MR. LUMUMBA: Okay.

16 BY MR. LUMUMBA:

17 Q. You were asked about, you were asked about a
18 picture of Mr. -- you were asked about a picture of Mr.
19 Flowers; is that correct, by your counsel when he stood up
20 here?

21 A. There has been a lot of questions about pictures.
22 I'm not for sure which one you are talking about.

23 Q. Okay. Well, let's venture back and I'm going to
24 try to ask you a proper question. The Court can tell me if
25 I'm wrong. You have recorded a description because you just
26 were telling the Court about the recall of Mr. Collins and
27 how good it was in your opinion; right?

28 A. That's true.

29 Q. Usually when a witness has good recall, then one of

1 the things that you judge that by is whether they can recall
2 precisely the details of the description of the person they
3 saw; right?

4 A. That can be a judge--

5 BY MR. EVANS: --Your Honor, again, that is
6 improper redirect.

7 BY THE COURT: No, it's not. You asked him
8 specifically that question.

9 BY MR. LUMUMBA:

10 Q. Okay. Isn't that true?

11 A. That can be a judgment of it.

12 Q. Yeah, well, in fact, as far as a description of a
13 person who possibly committed the crime, at that time you
14 didn't know who had committed the crime; right?

15 A. That's correct.

16 Q. And so as a police officer, one of the most
17 important things that you take down details on is a
18 description that might lead you to apprehend a person you are
19 looking for; right?

20 A. It can be true.

21 Q. It was true in this case; right?

22 A. It could be.

23 Q. No, no, no. I mean I don't want to quibble with
24 you, but in this case weren't you trying to find out who had
25 committed this crime?

26 A. At the time this was going on, there were many
27 other things continuing to go on at the same time.

28 Q. No, I'm not asking--

29 A. --I knew Porky Collins. Do you want me to--

1 Q. No. Let me--

2 BY MR. EVANS: --Your Honor, may he answer the
3 question?

4 BY MR. LUMUMBA: Look, I just -- Judge, all I
5 am asking is to answer my question.

6 BY MR. EVANS: And he is trying to if he will
7 be quiet and let him answer it.

8 BY MR. LUMUMBA: I wish he would let me ask
9 the questions.

10 BY THE COURT: Okay.

11 BY MR. LUMUMBA: All I want is an answer, and
12 then an explanation is fine. I haven't gotten the
13 answer yet.

14 BY THE COURT: Okay, well, ask him-- let him
15 answer it yes or no, and then he can explain it.

16 BY MR. LUMUMBA:

17 Q. Okay. The question is that it was very important
18 on this occasion to get as complete a description as possible
19 of the person who could have been connected to the incident;
20 is that correct?

21 A. At that time--

22 BY MR. LUMUMBA: Judge, could--

23 BY THE COURT: --You have got to answer it yes
24 or no; then explain it.

25 BY THE WITNESS:

26 A. Repeat your question.

27 Q. It was important on this occasion as you sat there
28 talking to Porky Collins to get as complete a description as
29 possible of the people that he had saw and particularly, of

1 the man that he said he saw the face of, got a glimpse of?

2 A. No.

3 Q. That wasn't important?

4 A. It is always important, but it wasn't completely
5 important at that time. Can I explain my answer?

6 Q. Go ahead. Certainly, I think you can.

7 **BY THE COURT:** Yes, go ahead.

8 BY THE WITNESS:

9 A. Plenty of things were going on. I'm not even sure
10 all the bodies had been carried out of that building at that
11 time. And at that point because two men had been seen in
12 front of the store didn't mean that those two men had
13 committed any particular crime or any one of them. We were
14 talking to many witnesses, and people were coming in. I just
15 scratched down their names, how I could get up with them as
16 who I knew.

17 Q. I understand.

18 A. Well.

19 Q. I understand. Go ahead and finish.

20 A. I am finished.

21 Q. Okay. But I understand all that and, in fact, the
22 fact that two men were in front of the store doesn't mean
23 today that those two men committed any crime; right?

24 A. Not in itself.

25 Q. Okay. But you asked Porky Collins to describe
26 these people to you; right?

27 A. He gave us a rough description and, yes.

28 Q. And he gave you a description?

29 A. Yes.

1 Q. And you wrote it down?

2 A. Part of it.

3 Q. Now this description was given to you way back on
4 7-16-96; right?

5 A. Right.

6 Q. And you are going to tell us today three or four
7 years later that you can remember what you wrote down and
8 what you didn't write down about what he said? Is that your
9 testimony?

10 A. It's pretty obvious. I can remember it if I can
11 look at it.

12 Q. Well, let me show you. No, I am asking you can you
13 remember - and you can use this or anything else you need. I
14 am showing you Exhibit number 5. You are telling us you can
15 remember today what you wrote down and what you didn't write
16 down?

17 A. Yeah, because I have got what I wrote down.

18 Q. On this paper?

19 A. Yes, sir.

20 Q. Okay, this is-- okay, can you tell us what he
21 said? You can tell us what he said about the description
22 that you didn't-- you remember that today?

23 A. These were just my personal notes. Just my general
24 notes, yes.

25 Q. Can you remember today?

26 A. I can remember what I testified to.

27 Q. On these notes that you took--

28 A. Right.

29 Q. --the only thing it says about a description is a

1 black male, medium complexion.

2 A. It says two black males.

3 Q. That's all it says.

4 A. That's all that says, yeah.

5 Q. And that's the only description you got from him at
6 that time; isn't that correct?

7 A. No, it's not.

8 Q. Okay. Well, what other description did you get
9 from him at that time--

10 A. --Like I testified--

11 Q. --that you remember four years later?

12 A. Like I testified earlier, he described one man as
13 having rounded features in his face. Obviously, he mentioned
14 two with medium complexion. I wrote that down. He said one
15 looked a little taller than the other, and that's basically
16 all I remember about that.

17 Q. So that was that complete description that he gave
18 you about, that made you feel that he had good recall, and
19 the only thing that he told you was that the men were both
20 medium complexion, that one had rounded features, and that
21 one was a little taller than the other?

22 A. I didn't say that that in itself was the reason I
23 felt he had good recall.

24 Q. But as to the description, that's the only thing he
25 told you?

26 A. Basically, yes.

27 Q. And you remember today even though that you didn't
28 write it down four years ago, you can remember that he
29 actually told you at this time that the man had rounded

1 features?

2 A. Exactly.

3 Q. Well, rounded features, you have got space here;
4 you could have put that down here; right?

5 A. I have got space there, yeah.

6 Q. My final question is when you write a report of
7 what a witness is telling you, you don't know if the witness
8 is going to remember from the day that he tells you to months
9 or maybe years later when he is called upon to recall what he
10 told you that day. You can't say that, can you?

11 A. I don't think anybody can say that.

12 Q. And that is one of the reasons that they teach you
13 to write a good report and put it down; right?

14 A. When it is available, yes.

15 Q. And you don't really recall, or you may not know
16 when you write the report what you are going to remember?

17 BY MR. EVANS: Your Honor, I object. This is
18 not relevant.

19 BY THE COURT: Well, yeah. I don't understand
20 the point you are trying to make. If you are
21 trying to make the point about his statement about
22 the fellow's recall, that point has been made
23 significant to the Court to understand where you
24 are going with it.

25 BY MR. LUMUMBA: All right, I will withdraw--

26 BY THE COURT: With a jury maybe you could go
27 ahead. With me you're just wasting your time.

28 BY MR. LUMUMBA: I will leave it alone. Let
29 me just make sure I have got all the exhibits.

1 **BY THE COURT:** Okay.

2 BY MR. LUMUMBA: I am making sure I don't
3 leave one of my copies up here. That's what I am
4 doing.

5 **BY THE COURT:** Well, you might want to give
6 all the exhibits that are marked that you have got
7 up there back to the Court Reporter so she has got
8 them. Okay, thank you, Mr. Johnson. You can
9 step--

10 BY MR. LUMUMBA: --I do have one question.
11 Let me admit to you, let me admit something from
12 this Court. This may be considered not to be
13 proper redirect, but it's something I forgot to
14 ask. And it is just one question, and I have no
15 objections to them standing up behind me and re-
16 asking and asking whatever they want about this
17 particular area. Let me ask the question, and then
18 the Court can decide.

19 BY MR. LUMUMBA:

20 Q. The question is at any point in time did you
21 attempt, did you ask Porky if he could identify a vehicle?

22 BY MR. LUMUMBA: That's the question. I don't
23 know if you will allow it to be asked.

24 **BY THE COURT:** My response to that is it's not
25 relevant because that is not what the Motion is
26 about.

27 BY MR. LUMUMBA: All right.

28 **BY THE COURT:** All right, Mr. Johnson, thank
29 you. You can go outside. Who will you have next?

1 BY MR. LUMUMBA: Mr. Miller.

2 BY THE COURT: Would you send Mr. Miller in,
3 please, sir.

4 BY THE WITNESS: Yes, sir.

5 MR. JOHN JOHNSON LEFT THE COURTROOM.

6 WAYNE MILLER,

7 upon being called to testify as a witness by the Defendant on
8 the Motion to Suppress Identification, having first been duly
9 sworn, testified as follows, to-wit:

10 BY THE COURT: State your name for the record.

11 BY THE WITNESS: Horace Wayne Miller.

12 M-I-L-L-E-R.

13 DIRECT EXAMINATION BY MR. LUMUMBA:

14 Q. Good afternoon, Mr. Miller.

15 A. How do you do, sir.

16 Q. Quite possibly you won't be able to hear everything
17 I say. If you can't hear something, please just ask me to
18 repeat it.

19 A. All right.

20 Q. Okay. You work, I take it, for the state police?

21 A. I am an investigator with the Mississippi Highway
22 Patrol; that's correct.

23 Q. Okay, and you were working in that capacity back in
24 July of 1996?

25 A. That is correct.

26 Q. In fact, how long have you been working in that
27 capacity?

28 A. At the investigative level, I have been working for
29 12 years.

1 Q. Okay.

2 A. For the Mississippi Highway Patrol, I have been
3 working 32 years.

4 Q. Did there come a time when you were called in to
5 help with the investigation of this case, this case being
6 State versus Curtis Flowers?

7 A. Yes, I was.

8 Q. Okay, this was an investigation of some deaths that
9 occurred at Tardy Furniture store?

10 A. That is correct.

11 Q. And when was it that you were called in?

12 A. I probably received the call something around 11
13 o'clock on the 16th of July of '96.

14 Q. Did you become involved immediately?

15 A. Yes. I did become involved in that investigation
16 at that time.

17 Q. Did you have a chance on that day to speak with a
18 gentleman by the name of Collins, sometimes called Porky
19 Collins--

20 A. --I did not myself.

21 Q. You never saw him that day?

22 A. I did not talk to him that day.

23 Q. Okay. Did you see him at all, if you know?

24 A. I probably did see him because I know Mr. Collins
25 and I did probably see him, and I knew who he was.

26 Q. How do you know Mr. Collins?

27 A. Just, I have been in and out of Winona, you know.
28 I am originally from Winona.

29 Q. Is he a friend of yours?

1 A. No, you know, just an acquaintance.

2 Q. Okay.

3 A. Not an enemy, not a friend; just I know him.

4 Q. Okay. Now you had-- did you talk to-- first of
5 all, I'm going to jump ahead a little bit and then go back
6 just a step. At some point you showed him some pictures; is
7 that correct?

8 A. I did, the 24th day of March.

9 Q. The 24th of March?

10 A. I'm sorry. Let me correct that. 24th of August,
11 I'm sorry. 24th of August.

12 Q. Now Investigator Miller, would it be safe to say
13 that the reason you remember that is because prior to coming
14 to testify, you had a chance to look at a report to see--

15 A. I looked over the reports to verify the date and
16 all of that.

17 Q. And one of the reports referred actually to
18 something that happened in March of '97; right? That was
19 when you took a statement from him?

20 A. I was not present at that, no.

21 Q. But in any event, in reviewing your reports, you
22 realized it was on the 24th--

23 A. Of August, right.

24 Q. --of August that you showed some pictures?

25 A. That is correct.

26 Q. Now who was present besides yourself at the showing
27 of these pictures?

28 A. District Attorney Investigator John Johnson and Mr.
29 Collins.

1 Q. Okay. And where did you see Mr. Collins at?

2 A. At the Winona Police Department.

3 Q. Was he there when you arrived, or did he come after
4 your arrival, if you remember?

5 A. I can't remember. I don't know whether he was
6 already there or not. I do not know.

7 Q. Did you have any conversation with him? Let me
8 tell you what my question is directed to.

9 A. All right, sir.

10 Q. Normally - and you correct me if I am wrong -
11 normally when you show a witness any kind of photographic
12 display or live lineup, somebody has got to make contact
13 with the witness to let him know to come down and see one;
14 right?

15 A. Right.

16 Q. So this is where my inquiry is directed. Do you of
17 your own knowledge know who made contact with Mr. Collins to
18 get him to come?

19 A. I did not make contact with him.

20 Q. So it would have had to have been someone else?

21 A. Right.

22 Q. Okay, and it would be safe to say you don't know
23 what him and that somebody else talked about?

24 BY MR. EVANS: Your Honor, that is not
25 relevant.

26 BY MR. LUMUMBA: The suggestion is very
27 relevant.

28 BY MR. EVANS: No, sir. He doesn't know what
29 I was doing at that time, but it has nothing to do

1 with this case.

2 BY MR. LUMUMBA: Judge, that is--

3 BY MR. EVANS: --The only thing that is
4 relevant is his knowledge about this case.

5 BY THE COURT: It's really not. His knowledge
6 about this lineup and all, anything that would
7 suggest that something had been suggested to Porky
8 Collins.

9 BY MR. LUMUMBA: All right. Now, so you
10 sustained the objection?

11 BY THE COURT: Yes, sir.

12 BY MR. LUMUMBA: Okay.

13 BY MR. LUMUMBA:

14 Q. Okay, now so was Mr. Collins in the presence of the
15 other officer you mentioned, Mr. Johnson, at the time you
16 first saw him on the 24th of August?

17 A. I don't recall if I arrived before Mr. Collins or
18 he came in later. I don't know.

19 Q. Okay, I see. Now you do recall that you had
20 gathered some pictures to show him a display?

21 A. That is correct.

22 Q. Do you also recall-- let me back up a little bit.
23 Did you talk to Mr., did you talk to Mr. Flowers on the 16th
24 of July of 1996?

25 A. Yes. I was-- yes, I did.

26 Q. Who else was present at that discussion?

27 A. Investigator Matthews.

28 Q. Would it be safe to say - I am asking this for
29 purposes of this hearing - that he was a suspect almost

1 immediately?

2 BY MR. EVANS: Your Honor, that is not
3 relevant.

4 BY THE COURT: Well, it might be. It might
5 be. I will let it in.

6 BY MR. LUMUMBA:

7 Q. Isn't that true?

8 A. Mr. Flowers was developed as a suspect very soon
9 into the investigation. He was.

10 Q. Would it have been safe to say, if you remember,
11 that actually on the very first day?

12 A. I wouldn't say the very first day, no.

13 Q. Okay, do you remember how long it was?

14 A. The more things that started developing, the more,
15 more things that caused him to become a suspect.

16 Q. Okay, well, so you can't give me a day?

17 A. I can't give you a date that it actually, you know,
18 that he was the main suspect.

19 Q. Would it have been within the first week or two?

20 A. Pretty much so.

21 Q. And it would be safe to say when you talked to him
22 on the 16th, you allegedly read him his rights; right?

23 A. That is correct.

24 Q. And you had him sign it?

25 A. He was read his rights, and he did sign.

26 Q. Which is something that you often do for suspects?

27 A. That is correct.

28 BY MR. EVANS: Your Honor, that has nothing to
29 do with--

1 **BY THE COURT:** --Let's move on from this
2 point.

3 BY MR. EVANS: --this motion.

4 BY MR. LUMUMBA: Okay.

5 BY MR. LUMUMBA:

6 Q. Now let me ask you this. Do you recall, where was
7 Mr. Collins-- not Mr. Collins; I'm sorry, but Mr. Flowers at
8 when you saw him on the 16th?

9 BY MR. HORAN: Your Honor, what relevance does
10 that have to whether or not the lineup is
11 suggestive in any way?

12 BY MR. LUMUMBA: I am leading directly to
13 questions about pictures.

14 BY MR. HORAN: Ask him whether or not he took
15 a photograph on that particular day, Your Honor.
16 That is the only relevant question.

17 BY MR. LUMUMBA: I am the examiner here. I
18 can ask questions--

19 BY MR. EVANS: --only if they are relevant.

20 **BY THE COURT:** I will let you ask it. Go
21 ahead.

22 BY MR. LUMUMBA:

23 Q. Okay, go ahead.

24 A. Ask the question again.

25 Q. Where was Mr. Flowers when you saw him on the 16th?

26 A. There at Greenwood-- I'm sorry. There at the
27 Winona Police Department.

28 Q. Did you ever see Mr. Collins on that day or shortly
29 thereafter in Carroll County?

1 A. No, I did not.

2 Q. Okay. Are you aware of whether or not a picture
3 was taken of Mr.?

4 **BY THE COURT:** Mr. who?

5 BY MR. LUMUMBA: I'm sorry, Mr. Flowers.

6 BY THE WITNESS:

7 A. There was probably some photographs taken of him
8 that day or the next day, and I don't know exactly which day.

9 Q. Either the 16th or the 17th?

10 A. Or maybe a day after that. I don't really know
11 exactly, but within those first two or three days.

12 Q. Early in the investigation?

13 A. Right.

14 Q. Were they taken by you or were they taken by the
15 people in Montgomery County, if you know?

16 A. I did not take the picture.

17 Q. Do you know what department took them?

18 A. I can't answer that.

19 Q. Did you at some point become in possession of that
20 picture?

21 A. Right; I did.

22 Q. And--

23 A. I would say that Investigator Matthews took that
24 photograph.

25 Q. I see.

26 A. Or some photographs.

27 Q. Was this a picture taken on, I assume a 13
28 millimeter camera. Was it a 13 millimeter camera?

29 A. I can't answer that.

1 Q. But it was a camera?

2 A. It was a camera.

3 Q. Did the pictures have to be developed or were the
4 pictures--

5 BY MR. HORAN: --Your Honor. We need to know
6 whether or not this is a photograph that they
7 took. That is the only relevant question that we
8 have here. Whether or not they were developed or
9 not doesn't really--

10 BY THE COURT: --If it's the photograph in the
11 lineup, it has got relevance. If not, it doesn't.

12 BY MR. LUMUMBA: Well, they have argued that
13 there was no picture available. It doesn't make
14 any difference whether it's the photographs in the
15 lineup or not. Their argument was--

16 BY MR. EVANS: --Your Honor, that has nothing
17 to do with this motion.

18 BY MR. LUMUMBA: Excuse me.

19 BY THE COURT: --Wait, wait. Let him finish
20 and I'm going to give you your chance.

21 BY MR. LUMUMBA: I know I am hoarse, so maybe
22 Counsel thinks he has some liberties.

23 BY THE COURT: No, wait a minute. Just talk
24 to me.

25 BY MR. LUMUMBA: Okay, well, look, let me say
26 this. Judge, here is my position. They asked the
27 question of the previous witness-- can we approach
28 the bench on this? I don't want to bias his
29 testimony in any way. Can we approach the bench?

1 **BY THE COURT:** Uh-hum.

2 (COUNSEL APPROACHED THE BENCH BUT WENT BEHIND
3 THE BENCH TO CONFER WITH THE COURT:)

4 BY THE COURT REPORTER: I'm not going to be
5 able to hear.

6 **BY THE COURT:** She is not going to be able to
7 hear. (To the witness) Would you step just outside
8 that door? Let's do it that way.

9 MR. WAYNE MILLER LEFT THE COURTROOM.

10 BY MR. LUMUMBA: The question asked of a
11 previous witness, Mr. Johnson, was whether they had
12 any photographs available, or did it take them a
13 while to develop the photograph for this case. And
14 apparently and clearly that was raised to explain
15 why they got a man allegedly saying on the 16th of
16 July that he may be able to identify a person, and
17 they don't show him a lineup until a month later
18 and so, which has a lot to do according to the case
19 law with the reliability of the identification.
20 The question that was asked to Mr. Johnson elicited
21 response that no photograph was immediately
22 available. Now irrespective of whether or not they
23 used it, if they had one that was available, then
24 it is relevant to the inquiry. I'm not going to
25 stay on it forever, but I would just like to know
26 if they had one available. Then he can explain
27 either in my questions or through his why they
28 didn't use it if they didn't. Okay. Why they used
29 another one when it took a long time to develop.

1 Do you understand what I'm saying, Judge?

2 BY THE COURT: I do, but here is the answer to
3 it is. There are different stages, of course, in
4 the trial. There is a stage where that may be
5 relevant. But that, the reliability of the
6 identification, as you know, is a jury question
7 which is not what we are here on today. It's a
8 question of whether or not there was an
9 unconstitutional suggestive lineup and whether they
10 did anything with Mr. Collins to influence him to
11 make that. And this question, those questions in
12 relation to that photograph may very well be
13 relevant at trial, but they are not relevant here
14 today for the determination I have to make.

15 BY MR. LUMUMBA: All right.

16 BY THE COURT: Okay. Y'all can get him if you
17 don't mind. So the objection is sustained.

18 WITNESS RETURNS TO THE COURTROOM.

19 CONTINUING DIRECT EXAMINATION BY MR. LUMUMBA:

20 Q. Did you at some point put a photograph display
21 together with Mr. Flowers in it?

22 A. I did.

23 Q. And did you have a number of pictures to choose
24 from?

25 A. A number of?

26 Q. A large number of photographs of people to put in
27 the display?

28 A. I had several photographs. I don't know whether it
29 would be what you would call a large sum.

1 Q. Well, about how many?

2 A. Probably 15, 20.

3 Q. Okay, and these were all black males?

4 A. Yes.

5 Q. All right. Were you given any direction as to what
6 description had been provided by the witness who was going to
7 look at the display?

8 A. Had I been given any description? No, I had not at
9 that time. No.

10 Q. Okay. When you put the display together, was it
11 your effort out of what you had to get people who were as
12 close in characteristics to Mr. Flowers as possible?

13 A. Of what I had, but I was very limited in what I
14 had.

15 Q. I understand.

16 A. I was trying to stay within the same age groups
17 and...

18 Q. Okay. The pictures that you put together, they
19 have been preserved; is that correct? They have been
20 preserved. We have them?

21 A. Yes. Yes, you do.

22 Q. And I'm going to show you what Exhibit 1, copy of
23 Exhibit 2 which is in a manila folder. Do you recognize it?

24 A. Yes, I do.

25 Q. And did you or was that the photograph display that
26 was shown to him, one of them? Is that one of the ones that
27 was shown to him?

28 A. These are copies of it.

29 Q. Okay, of the one that was shown to him?

1 A. That's correct.

2 Q. Okay. Do the copies look like the originals?

3 A. As well as I can remember, and I don't have the
4 originals to go by but.

5 Q. All right. It's true that in that photographic
6 display one man's head--

7 BY MR. HORAN: --Your Honor, I'm going to
8 object to this line of questioning on the grounds
9 it's not relevant. We have gone over this. The
10 Court can look at these photographs, and the
11 Supreme Court can look at these photographs. This
12 is a question of admissibility, not credibility or
13 reliability of a particular photograph. It's only
14 whether or not these photographs are admissible.

15 BY MR. LUMUMBA: If a picture is in a lineup
16 where one person is distinct amongst the rest and
17 that is the suspect, that is a constitutional
18 question.

19 BY THE COURT: Absolutely, it is and those
20 photographs depict that so I can determine that,
21 and this line of questioning would be cumulative
22 since you have already gone into it with two other
23 witnesses.

24 BY MR. LUMUMBA: All right.

25 BY MR. LUMUMBA:

26 Q. Did you maintain, do you have a record somewhere of
27 who those people are in the lineup?

28 A. Yes. There should be a record in the file.

29 Q. Oh, really? Did you supply that?

1 A. But I don't know. I haven't seen it. I thought it
2 was with the original.

3 Q. Where it lists the people in the lineup; right?

4 BY MR. EVANS: Your Honor, I know this is out
5 of line, but I might can clear something up. I
6 think the originals at the Supreme Court have the
7 names on the back of the original pictures.

8 **BY THE COURT:** Okay.

9 BY MR. LUMUMBA:

10 Q. Do you have records, the records that you are
11 speaking of, do they indicate anything about the age and the
12 height and the weight of the people in the lineup?

13 A. I can't answer that. I don't recall. I don't have
14 that before me, and I can't answer it right now.

15 Q. Do you have such records?

16 A. It should be with that original file.

17 Q. If it's not, would you have a copy of it somewhere
18 else, not necessarily here but somewhere?

19 A. It should be in some of the files that is already
20 here.

21 Q. So that is something that would have been supplied
22 to the investigator?

23 A. As far as I know, yes.

24 Q. Okay, did you tell-- who talked to the witness when
25 he came to look at the photos? Was it you or was it Mr.
26 Johnson?

27 A. I don't know what you are asking now. I'm not
28 understanding you.

29 Q. Was there any discussion with Mr. Collins when he

1 appeared to see the photographs?

2 A. I did not discuss anything with him other than
3 produce the photographs for him to look at.

4 Q. You didn't say a word?

5 A. No. I produced those and let him mark the one and
6 initial the one that he described as, or the one that he
7 picked out.

8 Q. How did he know what to pick out?

9 A. How did he know what to pick out?

10 Q. Yeah. Anybody--

11 A. --I mean he was told that this was a photo lineup.

12 Q. Right. And he was told to look for the person?

13 A. Yeah, but I didn't tell him that. I produced the
14 photos.

15 Q. I'm sorry, but I'm just trying to understand. Did
16 somebody tell him to look for the person that he saw out
17 there that day on the 16th?

18 A. Right. But I was not that person.

19 Q. Who was that person?

20 A. I produced the photo lineup.

21 Q. Who was that person?

22 A. Mr. Johnson was present at that time.

23 Q. And he told him that in your presence?

24 A. That this was, yes. And I produced the photo
25 lineup.

26 Q. All right. And he told him that same thing with
27 two different lineups; right?

28 A. Right. There were two different lineups produced,
29 and this is not the first one. This was the second one.

1 Q. Right. And with the first one he was told that,
2 and with the second one he was told that; right?

3 A. Yes. He understood what he was looking at these
4 photographs for, to determine if any of these people in this
5 photograph resembled the person that he had seen in front of
6 Tardy's on the 16th.

7 Q. Whether they resembled the person; right?

8 A. Yes. There was--

9 Q. And he was trying to pick out the person he had
10 saw; is that right?

11 A. The one he had seen.

12 Q. And that's what he was asked to do?

13 A. That's correct.

14 Q. Now he actually picked out somebody in both
15 lineups; right?

16 A. I'm not hearing you.

17 Q. I'm sorry.

18 A. And I'm really, I am trying to hear you.

19 Q. I understand. I understand. He picked somebody
20 out in both lineups; is that right?

21 A. That's correct.

22 Q. So in both lineups he picked a person out?

23 A. Out of the first one he picked out a possibility of
24 two.

25 Q. Right, well, okay. Go ahead.

26 A. Out of the first lineup he said, well, this one
27 looks like one of the guys, one of the guys, but he wasn't
28 sure. Then he said, but this guy looks like him, and he
29 wasn't sure about that. So he didn't identify anybody of

1 being the second person.

2 Q. Well, in the second lineup, what he initially
3 said--

4 A. --Now we are referring to this as the second line-
5 up? (Holds up exhibit.) Okay.

6 Q. Yeah. What he initially said is that--

7 BY THE COURT: --Let the record reflect that
8 Exhibit 2 is the second lineup. Is that right?

9 BY MR. LUMUMBA: That's correct.

10 BY THE COURT: Okay.

11 BY MR. LUMUMBA:

12 Q. What he initially said, what initially came out of
13 his mouth is that the person he pointed to looked like the
14 person; isn't that right?

15 A. That's, I think that's correct.

16 Q. So he didn't say it was the person. He said it
17 looked like him?

18 A. He said that looked like him, and then he initialed
19 that as saying that was the person that he had seen out
20 front.

21 Q. So he first said it just looked like him?

22 A. That's correct.

23 Q. All right. I will show you another copy of Exhibit
24 2. Do you recognize that sheet?

25 A. I do.

26 Q. You recognize--

27 A. --Well, I recognize this as being a copy--

28 Q. I understand.

29 A. --of something.

1 Q. Does it have initials on it?

2 A. Right. It has my initial and the date on it.

3 Q. Does it have the witness' initial?

4 A. Yes.

5 Q. Does it say that he is sure that that is the
6 person? Is that what it says there?

7 A. No. It says, this reflects his initials, the date
8 and the time.

9 Q. All right. He initialed the first lineup he saw
10 too. Didn't he?

11 A. I don't know. I don't have the first lineup.

12 Q. We are told we don't have a copy of that here.

13 BY MR. EVANS: Your Honor, the copy is right
14 up there. I don't know how many times we are going
15 to have to go through this.

16 BY MR. LUMUMBA: We don't have the back of the
17 copy.

18 BY THE COURT: Don't have--

19 BY MR. EVANS: --Yes, sir; we do. The back
20 was blank.

21 BY THE COURT: Okay, well, okay.

22 BY MR. LUMUMBA: We don't have the back of
23 it.

24 BY MR. EVANS: Your Honor, that is the back
25 right there.

26 BY THE COURT: Is that of 1?

27 BY MR. EVANS: That is the front. The front
28 has his initials and John's initials. The back is
29 blank.

1 **BY THE COURT:** Is that number 1? When I say
2 number 1, is that the first lineup?

3 **BY THE WITNESS:** It is, Your Honor.

4 **BY MR. EVANS:** And I do need that copy back
5 also, Your Honor. I keep giving him my copies, and
6 I don't have any.

7 **BY THE COURT:** Well, I think you are supposed
8 to be getting them all back, are you not?

9 **BY MR. EVANS:** Yes, sir, but--

10 **BY THE COURT:** --Okay, then you have got them--

11 **BY MR. EVANS:** --so that this one doesn't get
12 introduced.

13 **BY MR. LUMUMBA:** This is a much clearer copy.
14 We have never received a copy this clear.

15 **BY THE COURT:** Well, whatever; I don't think
16 it says on the back, anything on the back though.
17 If you have got no use for it, let him have it
18 back.

19 **BY MR. LUMUMBA:** All right. Can I get a copy
20 of this?

21 **BY THE COURT:** Yeah. We will see that you get
22 a copy.

23 **BY MR. EVANS:** He has got about four of them,
24 Your Honor. How many do I have to give him?

25 **BY THE COURT:** Well, if it's--

26 **BY MR. EVANS:** --He has gotten that; yes, sir.

27 **BY THE COURT:** That is that good?

28 **BY MR. EVANS:** Yes, sir.

29 **BY THE COURT:** Okay. Then you don't have to

1 give him any more.

2 BY MR. LUMUMBA: I don't have one that good.

3 BY THE COURT: All right.

4 BY MR. LUMUMBA: It's not true, not true.

5 There would be no reason for me not to use it.

6 BY MR. EVANS: If the Court would like, I will
7 give him another copy, but if he is going to sit up
8 there and start saying untrue, we are fixing to
9 have a battle in here--

10 BY THE COURT: --Well, no, wait a minute.
11 Wait a minute. No, we are not going to have that.
12 It's too late in the day for that. The Judge
13 doesn't want that. There is an original of that,
14 isn't it?

15 BY MR. EVANS: Yes, sir; there is. It's in
16 the Supreme Court.

17 BY MR. LUMUMBA: All right.

18 BY THE COURT: Okay, let's move on. Let's
19 go.

20 BY MR. LUMUMBA:

21 Q. When was the picture taken in Exhibit 2 of the, of
22 Mr. Flowers?

23 A. Well, I think, as I answered while ago, I am not
24 exactly sure when it was taken because I was not the one that
25 took that photograph. But that may have been just a Polaroid
26 that was taken, and I think by one of our investigators, you
27 know, like Mr. Matthews, but I'm not positive of that.

28 Q. But, so the same photograph that you indicated
29 could have been taken on the 16th, 17th, or the 18th is the

1 same photograph that was ultimately used in that display?

2 A. That's correct. That is correct that this was Mr.
3 Flowers at the time that we took the photograph, and I don't
4 know exactly where that was taken, and I can't tell you
5 whether it's a photograph, it's a Polaroid or not because I'm
6 not looking at the original. If I saw the original, I would
7 know.

8 Q. Did anybody make notes of what Collins said at the
9 time of the lineup?

10 A. Mr. Johnson was taking notes.

11 Q. All right, did you take any notes?

12 A. I did not.

13 Q. Was it being recorded?

14 A. With a tape recorder? I did not tape record that.

15 Q. Did he?

16 A. I can't answer that, but I don't think so.

17 Q. Did you have any other conversations with Mr.
18 Collins prior to that day?

19 A. Prior to that day?

20 Q. The 24th of August.

21 A. At some point I did talk to Mr. Collins. He had
22 told myself and Mr. Matthews where he had been prior to
23 seeing these people in front of Tardy's, and that he had gone
24 to the Wal-Mart store to buy some type of something for his
25 automobile or something. He had been by the cleaners. He
26 produced the receipt for the Wal-Mart purchase that he had
27 made, and I asked him for that to establish the time, and he
28 did produce that.

29 Q. Was this conversation prior to August the 24th of

1 the '96?

2 A. Yes, it was.

3 Q. Anyone else present?

4 A. I'm sure that probably Mr. Matthews, and I don't
5 know whether Mr. Johnson was present or not.

6 BY MR. LUMUMBA: No further questions.

7 CROSS-EXAMINATION BY MR. HORAN:

8 Q. Just a few questions, Captain Miller. You made
9 reference to August 24th. That would be 1996; correct?

10 A. That is correct.

11 Q. Some time after, a month and a half after these
12 murders; right?

13 A. That is right.

14 Q. And I believe at some point in time between the
15 16th and that particular day, y'all were attempting to get up
16 with Mr. Collins, were you not?

17 A. That is correct.

18 Q. And did he have some sickness in the family or
19 something like that where he was not available?

20 BY MR. LUMUMBA: Your Honor, excuse me.

21 Leading.

22 BY MR. HORAN: I will rephrase the question.

23 BY MR. LUMUMBA: Leading.

24 BY MR. HORAN: I will rephrase the question.

25 **BY THE COURT:** Okay, he is going to rephrase.

26 BY MR. HORAN:

27 Q. Was there any particular reason why y'all were not
28 able to get up with Mr. Collins?

29 BY MR. LUMUMBA: It is still leading.

1 BY MR. HORAN: That is not leading.

2 BY MR. HORAN:

3 Q. Was there any particular reason they were not able
4 to get up with him?

5 BY THE COURT: Overruled. Go ahead.

6 BY THE WITNESS:

7 A. We had attempted several times to get Mr. Collins,
8 and he had a brother-in-law that was near death at one of the
9 hospitals in Jackson. He was having to travel back and forth
10 to Jackson, and we were just unable to get with him.

11 Q. Okay, and if you could have, would you have
12 presented this photo--

13 A. --We would have done that at least two and a half,
14 three weeks earlier.

15 Q. Okay, and that explains the time span?

16 A. That is correct.

17 Q. Okay. The two photograph lineups, I understand the
18 first one which is marked for identification, which is
19 actually the second photograph that was shown to him, that
20 includes the Defendant, does it not?

21 A. It does.

22 Q. Okay, and Mr. Collins identified that photograph
23 after it was presented to him; right?

24 BY MR. LUMUMBA: Leading. Leading, Judge.

25 BY THE COURT: Don't lead him.

26 BY MR. HORAN:

27 Q. Did he identify anybody in that?

28 A. Ask--

29 Q. --Did Mr. Collins ever identify anyone out of that

1 photo array?

2 A. Mr. Collins looked at the photo spread and picked
3 out number 4. I initialed the back of that. Mr. Johnson
4 initialed the back of that, and Mr. Collins initialed the
5 back of number 4 photograph, which is of Curtis Flowers.

6 Q. Okay, and then you testified that the first
7 photograph display or array that was given to him, he noticed
8 some characteristics that were the same?

9 A. Right.

10 Q. He never did positively identify anyone?

11 A. No, he did not.

12 Q. So the photograph lineup of the Defendant was shown
13 to him second?

14 A. That is correct.

15 Q. At any time did you or Mr. Johnson say anything or
16 point to any of the photographs or suggest that he ought to
17 identify the Defendant in any way?

18 A. No, did not.

19 Q. And was the purpose of this particular lineup for
20 Mr. Collins to look at those photographs to see if he could
21 identify the persons that he had seen outside that store?

22 A. That is correct. It was a very simple, look at
23 this photograph and.

24 Q. Procedurally, did you do anything differently on
25 this particular photographic lineup than you had done in the
26 past 12 years or 16 years that you have been a Highway Patrol
27 investigator?

28 A. No, I did not.

29 Q. And I want to clear something up. Did y'all ever

1 tell Mr. Collins that the suspects that y'all had, or if
2 y'all had any suspects, that the suspects were actually in
3 those photographs?

4 A. No, did not.

5 Q. So it wasn't a situation where y'all were saying,
6 We want you to identify the persons in the photographs that
7 were outside the store. You just showed him the photo
8 lineup?

9 BY MR. LUMUMBA: Leading.

10 BY THE COURT: Sustained.

11 BY MR. HORAN:

12 Q. Is that right?

13 A. That is correct.

14 BY MR. HORAN: No further questions.

15 REDIRECT EXAMINATION BY MR. LUMUMBA:

16 Q. I'm going to show you a copy of Exhibit D-3, the
17 second page. Have you seen that before?

18 A. I think these are some notes, I think that Mr.
19 Johnson took.

20 Q. Does your initials appear on them?

21 A. Yeah, I think my initials are on the top up here.

22 Q. All right. Now would it be safe to say that that
23 is a record of what Mr. Collins allegedly said during the
24 time of the identification or notes?

25 A. These are the notes that were taken by Mr. Johnson,
26 yes.

27 Q. At the time that you were looking, that he was
28 looking--

29 A. --that he was looking at the photographs.

1 Q. At the photographs, okay. Is it anywhere on there
2 where it says, "Positive identification made"? Do those
3 words appear on there anywhere?

4 A. When it says--

5 Q. Listen to my question. Does it anywhere appear on
6 there, "Positive identification made"?

7 A. Not the exact words of "positive," no.

8 Q. Well, "positive" doesn't appear anywhere. Does
9 "positive" appear there anywhere?

10 A. No, it does not.

11 Q. Does "certain"? I'm certain that's the man. Does
12 that appear anywhere?

13 A. "Certain" does not.

14 Q. Okay. Now, in fact, you would agree that the first
15 words that appear there with relation to number 4 express
16 some equivocation, lack of certainty. The first words, the
17 first phrase in quotes, read that first phrase to me as it
18 relates to number 4.

19 A. All right. "I believe that is him. It looks like
20 him"--

21 Q. --Okay, well, let's stop there. "I believe that's
22 him." You wouldn't call that a positive identification,
23 would you, at that point?

24 BY MR. HORAN: Your Honor, again, first of
25 all, this is improper, incorrect, improper redirect
26 examination. I just asked him did they do anything
27 to suggest an answer. That's all I went into.

28 BY MR. LUMUMBA: No.

29 BY THE COURT: Let him finish.

1 BY MR. HORAN: That is a procedural matter.
2 Second of all, this has been covered on direct
3 examination, and whatever Mr. Miller's
4 interpretation of what that means means absolutely
5 nothing. That is things he can present to a jury.

6 BY MR. LUMUMBA: No, Judge. They keep asking
7 Mr. Miller over my objection and Mr. Johnson if
8 they may, if he made a positive identification.
9 And at least twice we have gotten the answer yes.
10 Now if they can interpret it as a positive
11 identification, I can go into why they are making
12 that interpretation, so I can--

13 BY THE COURT: --It's not relevant to this
14 hearing. That is a jury question, and that is not
15 what is before me. So the objection is sustained.
16 It's not proper redirect either, but on the
17 substance of it, it's not relevant to this
18 hearing. It may be later.

19 BY MR. LUMUMBA: I don't have any further
20 questions, Judge.

21 BY THE COURT: Okay, thank you, Mr. Miller.
22 Who will you have next?

23 WITNESS STEPS DOWN.

24 BY MR. LUMUMBA: I don't have any other
25 witnesses on this.

26 DEFENDANT RESTS ON MOTION.

27 BY THE COURT: Okay. Has the State got any?

28 BY MR. EVANS: None, Your Honor.

29 BOTH SIDES REST ON MOTION.

1 **BY THE COURT:** Okay. Argument?

2 BY MR. LUMUMBA: Yes, sir.

3 BY MR. MILLER: Your Honor, are we excused?

4 **BY THE COURT:** Well, how about it, gentlemen?
5 Are they excused?

6 BY MR. EVANS: Yes, sir.

7 BY MR. LUMUMBA: We need to discuss time. Can
8 we do that now?

9 BY MR. HORAN: They need to--

10 **BY THE COURT:** --Well, wait a minute. Just
11 wait a minute, Mr. Horan. Let me see what he has
12 got to say, and then we will go -- why do you want
13 them here?

14 BY MR. LUMUMBA: Because we have also need to
15 have a discovery hearing. This witness has
16 indicated that at least one thing exists that we
17 have never received.

18 **BY THE COURT:** Have you filed a motion to
19 compel?

20 BY MR. LUMUMBA: Filed a motion to compel?
21 Yes, actually we argued it before the Court that we
22 didn't get everything, and they claim we did. I
23 didn't know we didn't have everything. I thought
24 we had. But he has just told me, told us both that
25 they have pictures which appear with the names and
26 the vital information, some of it, of the people in
27 the photographs.

28 **BY THE COURT:** No, no. What he said was that
29 he thinks that exists, and the District Attorney

1 said they are in the Supreme Court. That is what
2 he said. So they are available to you right now.

3 BY MR. LUMUMBA: Well, I don't know that until
4 I see them.

5 BY MR. EVANS: Your Honor--

6 **BY THE COURT:** --If they are not, then you can
7 file a motion to compel at that time.

8 BY MR. LUMUMBA: Well, Judge, let me just
9 explain. Let's not lose the sequence of this. We
10 raised to the heavens the issue at the last hearing
11 that we needed the specific photographs and the
12 information that was all used relative to the
13 identification. We were told that we were going to
14 be shown of it, and we barely saw some old copies
15 that you can hardly see. And then they said that
16 there was something with the Supreme Court, which
17 the gentleman here indicated that he was going to
18 get back from the Supreme Court.

19 BY MR. HORAN: I never indicated that.

20 BY MR. LUMUMBA: He specifically said that in
21 your presence.

22 **BY THE COURT:** Okay, but here is the point.
23 If they are not here and you haven't got them and
24 it's at the Supreme Court, you are entitled to get
25 them, and you are entitled to go look at them. If
26 I have to furnish an order to get that where you
27 can do that, I'm going to do that. But I can't
28 produce them today.

29 BY MR. LUMUMBA: No, no. All I'm saying, I'm

1 not asking the Court-- I hope they are not here
2 today or else they would give them to me. All I'm
3 saying is we need to get a clear statement before
4 this gentleman leaves on what the record with the
5 Supreme Court says. Does it, in fact, have names,
6 addresses, date of births, and that kind of
7 information with it?

8 **BY THE COURT:** He has testified that he has at
9 some place, it's either on the back of those
10 photographs or in his possession, a record
11 somewhere that he has information concerning those
12 individuals that are in the lineup. Would the
13 State agree that that is true?

14 **BY MR. EVANS:** Your Honor, whatever we have
15 got is the original photo lineups. They were
16 introduced into evidence, or they were introduced
17 at least for identification. The Supreme Court has
18 them. They were brought back to Tupelo last time.
19 We had so many days we had to get them back to the
20 Supreme Court. Whatever is on the back of them is
21 what we have got.

22 **BY THE COURT:** Okay, so you don't know; is
23 that your answer?

24 **BY MR. EVANS:** I can't remember. It seems
25 like there may have been some names on the back of
26 them, but I cannot remember.

27 **BY THE COURT:** If they are not on that item,
28 do you have them at all?

29 **BY MR. EVANS:** No, sir.

1 **BY THE COURT:** Does Mr. Miller have them at
2 all?

3 **BY MR. EVANS:** Not to my knowledge.

4 **BY MR. LUMUMBA:** Well, Mr. Miller has just
5 told us they exist.

6 **BY THE COURT:** Okay, let's get Mr. Miller back
7 up here just a second.

8 **BY MR. HORAN:** Your Honor, can I say
9 something?

10 **BY THE COURT:** I hate to get out of order.

11 **BY MR. HORAN:** If they will look at the
12 supplemental report of Mr. Miller on the photo
13 lineup, I think in the discovery material that
14 stuff is in there in the typed report.

15 **BY THE COURT:** Okay, well, that's fine. If
16 they have got it, I'm not going to make you produce
17 it again. I have just got to know what's what.

18 **BY MR. HORAN:** I'm not sure.

19 (MR. MILLER RETURNS TO THE COURTROOM.)

20 **BY THE COURT:** Okay, Mr. Miller, I have got a
21 couple of questions I want to ask you.

22 **BY MR. WAYNE MILLER:** All right.

23 **BY THE COURT:** You have indicated that there
24 does exist a record of these people describing who
25 they are, what their physical characteristics are,
26 and stuff like that available to the people that
27 were in that lineup; is that right?

28 **BY MR. MILLER:** Yes, sir.

29 **BY THE COURT:** Do you know where those records

1 exist?

2 BY MR. MILLER: I thought it was on the back
3 of those photographs.

4 BY THE COURT: Do you have those records other
5 than that?

6 BY MR. MILLER: No. I do not have any records
7 with me today.

8 BY THE COURT: No, do you have those records
9 other than that?

10 BY MR. MILLER: I probably would have a copy
11 some place of that same photo spread that should
12 have that. I don't know. I will have to look.

13 BY THE COURT: Okay, you think they are on the
14 ones at the Supreme Court?

15 BY MR. MILLER: Right. I think that's
16 correct.

17 BY THE COURT: Okay. Here is what you have
18 got to do. If you need an order to this effect, I
19 will give you an order to this effect. You are to
20 check with the Supreme Court within the next week
21 and see if that exhibit is there, examine that
22 record or have somebody from your office examine
23 that record, and see if those items exist on that
24 thing. If they are not there, then you need to
25 contact the Court. I will give you an order
26 directing Mr. Miller to find those records and
27 supply them to you. Is that fair enough?

28 BY MR. LUMUMBA: Yes, that is good, Judge, on
29 that issue.

1 **BY THE COURT:** Now.

2 (Phone or beeper of some sort was going off in
3 the courtroom.)

4 **BY THE COURT:** You have got me. It's probably
5 the alarm telling us we have got to go.

6 (Laughter.)

7 BY MR. LUMUMBA: We were told that-- and,
8 Judge, I don't want to, I just wanted to state for
9 the record we are getting a lot of noise from the
10 audience. I'm not objecting to it, but I'm saying
11 it has been going on the entire hearing. And I
12 think I recall the Court scolding some of the
13 Defendant's relatives at a prior hearing for that.

14 **BY THE COURT:** Well, there has been nothing
15 here to disrupt this court. Let's go ahead and
16 argue.

17 BY MR. LUMUMBA: Okay, I wanted to make a
18 record in case it happens again.

19 **BY THE COURT:** I understand. Okay.

20 BY MR. LUMUMBA: Okay, now--

21 BY MR. EVANS: --Your Honor, can this witness
22 leave?

23 BY MR. LUMUMBA: Counsel-- let me just say
24 Counsel is telling us that there was a supplemental
25 report filed by Mr. Miller with that information in
26 it.

27 BY MR. HORAN: I'm not saying that, Your
28 Honor. I said if they will look at it, I think
29 there is a reference to the photo lineup in a

1 supplemental report, and it names the names, I
2 believe, of the individuals. I'm not positive.

3 **BY THE COURT:** Okay, I made a ruling that
4 ought to cover this already on that, and Mr.
5 Lumumba, it's on you if you need the order, to get
6 an order directing that. As to any other motion
7 for discovery, there is, I have granted at least
8 two orders ordering them to discover stuff to you.
9 If you have specific items that you know that they
10 have not produced and you want to file a motion to
11 compel, I will hear that at that time.

12 **BY MR. LUMUMBA:** Okay.

13 **BY THE COURT:** But if it's not anything, if
14 there is not a motion to compel this afternoon, we
15 are not going to hear it this afternoon.

16 **BY MR. LUMUMBA:** Can we have an order to
17 review their entire file and all the exhibits that
18 they have in their possession? I would like to do
19 that to make sure that we have everything. I don't
20 see why we can't do it. I'm not asking to review
21 their questions or attorney work product, but
22 everything created by the investigation itself, I
23 am asking to have an opportunity to review.

24 **BY THE COURT:** Well, I have got discovery
25 orders already in place on that, and if they have
26 complied with those, then they have complied with
27 them.

28 **BY MR. LUMUMBA:** We don't know, Judge, unless
29 we can see the file.

1 **BY THE COURT:** Well, you had opportunity to
2 see it because I have given you two orders giving
3 you the right to see anything that is
4 discoverable.

5 BY MR. LUMUMBA: Okay.

6 **BY THE COURT:** If you didn't see it, that is
7 not my fault. All right, you are free to go.

8 BY MR. MILLER: Thank you.

9 **BY THE COURT:** So are the others. Now I will
10 hear argument.

11 BY MR. MILLER: The others are free?

12 **BY THE COURT:** Yeah.

13 (Mr. Millers leaves the courtroom.)

14 BY MR. LUMUMBA: We have a case of Stanley Ray
15 Ellis v. State of Mississippi, which is located at
16 667 So.2d 599, Mississippi, 1995. And we also have
17 the case of, we have an en banc decision in 125-
18 96. I would have to get the actual cite as it
19 appears today, but what we have is a published
20 opinion. We don't have the actual publication. We
21 have the copy that comes from the Court before it
22 is published.

23 **BY THE COURT:** Well, what is the style?

24 BY MR. LUMUMBA: Slip opinion, slip opinion.
25 It is called Rodney Gray v. State of Mississippi.

26 **BY THE COURT:** Is that G R E or G R A?

27 BY MR. LUMUMBA: G-R-A-Y.

28 **BY THE COURT:** Okay.

29 BY MR. LUMUMBA: It's 96-- in the Supreme

1 Court, it's 96 DP00241SCT. It was entered--

2 BY THE COURT: Is there a hyphen in there?

3 BY MR. LUMUMBA: Yes, a hyphen, yeah.

4 BY THE COURT: After 96?

5 BY MR. LUMUMBA: Yeah.

6 BY THE COURT: All right, let me see if I have
7 got it--

8 BY MR. LUMUMBA: --a hyphen after D P.

9 BY THE COURT: It's 96-DP-00241SCT?

10 BY MR. LUMUMBA: Hyphen S C T.

11 BY THE COURT: Okay, all right.

12 BY MR. LUMUMBA: And then you have got the
13 date of judgment is 1-25-96. The date of judgment is
14 1-25-96. In the Gray case it indicates the reliability has
15 been deemed the lynch pin of determining the admissibility of
16 identification testimony. And they cite Manson v.
17 B-R-A-T-H-W-A-I-T-E at 432 US-98 114, and it's a 1977 case.
18 They also cite a Mississippi case, Nathan v. State, 552 So.2d
19 99, a 1989 case.

20 Several things they look at in determining whether
21 an identification is reliable. Now first of all, we would
22 point out to the Court that the photo display is suggestive
23 on its face. The photo display is suggestive in looking at
24 Exhibit number 2 because Mr. Flowers is put at number four
25 spot, and in number four spot his photo makes him stand out
26 from all the other persons on this sheet. His head appears
27 to be much larger. His face seems to be closer to the front
28 of the photo, lacks the depth that the other photos have, and
29 with respect to several of the photos - I would suggest all

1 of them, with the possible exception of one - he looks older
2 than the other people displayed. His complexion is darker,
3 and that is one of the things that the witness claims he was
4 focusing on, the darkness of the complexion, than everybody
5 in this spread with the exception of maybe one other person.
6 And it's probably easier to see there than it is on this, but
7 that is the case.

8 There is no way and I would be-- that the people
9 displayed in exhibits 1, 2, or 6 are anywhere close to the
10 age of Mr. Flowers. Now when I say close, five to ten years
11 I don't think is close. I mean I guess, you know, the
12 question becomes what you consider as close. But when you
13 start getting those kind of differentiations, clearly a
14 person is going to stand out over somebody else.

15 Moreover, what we have here is people in five and
16 three are totally different than anything described,
17 allegedly described by the witness. He is looking for a
18 receding hair line. Neither one of those people have it. He
19 is looking for a dark skinned person. Neither one of those
20 five or three are dark skinned, and yet still their hair is,
21 both of them may be braided. One of them clearly is braided,
22 and here again, they are pushed to the front. He is pushed
23 to the front. They are in the back.

24 Now I don't know -- well, and so those are the
25 characteristics which make it a suggestive display. I would
26 also argue that I really don't think any of these people have
27 a round face, but since the Defendant's face is bigger in
28 this photo, it would have to look rounder than any of the
29 other people in it. Actually, to be honest, neither one of

1 them have a round face. But the Defendant's is clearly the
2 rounder than anybody else.

3 So what we look at is the questions which have to
4 do with the reliability of the identification. The case law
5 said one of the things to be considered is the opportunity to
6 view the accused at the time of the assault or the alleged,
7 person who is alleged to be the accused at the time of the
8 assault. You have cases where they have seen a person 10
9 minutes, 15 minutes, all that kind of stuff.

10 In this particular case, they saw him for 15
11 minutes in the Ellis v. State case. In this case you are
12 only talking about a glimpse is all the witness saw.
13 Degree-- and I also point out that there is no history of
14 seeing this man, and there is no history of seeing him even
15 after the incident.

16 Degree of attention. The description, the degree
17 of attention, I'm sorry; degree of attention refers to
18 whether there was a spectacular event which drew the
19 attention. It would be one thing if he testified that he saw
20 somebody running out of the place with guns. The testimony
21 here is that he saw somebody doing something which he thought
22 was an argument. When he glimpsed at them and then bothered
23 to turn around, which apparently he was trying to get a good
24 look according to him, he never saw the face again. The
25 degree of attention does not help the identification here.

26 Accuracy of prior description. I don't know how
27 accurate the description-- I mean I don't know many black men
28 there are who are medium complexion. And in fact, this is
29 one black man that is not medium complexion. He is dark.

1 But I don't know how many black men you have who are medium
2 complexion. There is an officer in here who is medium
3 complexion sitting to my right. There is other black men
4 here who are darker than I. But this man is clearly not
5 medium complexion. He is of dark skin by anybody's
6 understanding.

7 But in any event, accuracy of prior description -
8 no eyes, no bone structure, no height in the original notes,
9 no-- and then according to officer, he didn't give a height
10 in the original notes he said. One man was taller than the
11 other. If you notice, as Johnson said, one man was taller
12 than the other one. I don't know how that is supposed to
13 help. But, and no other indicia of identification, no other
14 description that really helps.

15 The round face. There has got to be at least a
16 million faces rounder than the one, than any of those
17 actually on that, including the Defendant's.

18 Level of certainty, that's a good one. "I think,"
19 "I believe"; also the duration of time between the incident,
20 the viewing and the identification, over a month. It doesn't
21 really matter why it took that long. It's still a factor to
22 consider. Like the Court has said, this is not an inquiry,
23 and we will accept that for purposes of this discussion, into
24 whether they intended to call something. It's just an
25 inquiry into whether the circumstances presented problems
26 with identification: Over a month to identify a person that
27 you have never seen before in your life, who you have got a
28 very vague description of, who you have never seen since or
29 before the incident, and it takes a month for them to show

1 you a display. And we have got allegations here that even
2 when he saw him, he didn't express certainty. He never said
3 he was certain, never said he was positive.

4 And in fact, even though the last statement which
5 is allegedly recorded, after they said that he made an
6 identification or after they put down, pointed to 4, said
7 something about do you know Curtis Flowers, a name which has
8 been bandied about by that time, but even forgetting that,
9 No, I don't know Curtis Flowers, but I know the man that I
10 saw is the man that was outside. After he had done said, "I
11 believe," "looks like," and expressed on various levels of
12 uncertainty, uncertainty which not only gripped him then, but
13 uncertainty that gripped him at the time of the initial
14 incident.

15 He said at that time, according to the officer, may
16 be able to make an identification, not that he could or that
17 it was positive or certain. And then finally, up until the
18 last trial, the man was "looked like," and even here he has
19 never said he is positive. He left here saying, I believe he
20 is the person. Asked several times whether he was positive
21 by his own, by the attorney on the other side, who he
22 pretends to be testifying to and who he will talk to out of
23 the courtroom and won't talk to me; his best response is "I
24 believe." "I will believe it," and the question is, is he
25 certain of it? He may believe it for a number of reasons.
26 It might have nothing to do with what he perceived.

27 And he didn't say that at the time of the trial,
28 and all the incidents that I quote, "look like," "man was a
29 little darker," and various other kinds of descriptions which

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 did not say that he could positively identify the person.
2 This person's identification reeks with uncertainty, and just
3 because the question tries to dress it up by making it an
4 identification when virtually the same language is used in
5 the first lineup when he identifies somebody else, that
6 doesn't change the character of what actually occurred.

7 So what I would say to the Court is that this is
8 not an identification which should come before a jury.
9 Perhaps the gentleman has other things to testify to, but not
10 to identification lawfully and legally, and I don't think it
11 will pass the legal threshold of being worthy to be accepted
12 as a reliable identification. So that is my objection.

13 I would suggest this too - is that after one of the
14 things that you see used to determine whether the lineup is
15 suggestive, suggests something that wasn't there prior to the
16 time of seeing the lineup is whether the lineup makes him
17 more certain than he was before. There is absolutely no
18 certainty expressed by this gentleman, and the description
19 does not bear forth any certainty prior to the time of the
20 lineup.

21 He sees a lineup of a big headed individual, the
22 only one in the lineup; darker skin, older person. Then what
23 he does, he expressed equivocation as he is standing there,
24 and not until another question is asked him about the
25 Defendant's name at the end of the display does he express
26 anything that even says I know it is the person, still
27 without using the words "positive" or "certain." So I think
28 it is bolstered. It's-- so a degree, the degree of his
29 identification was bolstered by the lineup which was

1 suggestive.

2 **BY THE COURT:** Okay. Mr. Evans.

3 **BY MR. EVANS:** Thank you, Your Honor.

4 Your Honor, to start with, I think it is very
5 obvious that this witness attempted to make absolutely sure
6 that everything he said was exactly right. He has explained
7 in detail to both the officers and to the Court at a previous
8 trial exact details of where he was that morning, who he saw,
9 what he saw them doing. He specifically went through details
10 about all of that.

11 He has testified and give statements that at the
12 time he passed by Tardy Furniture, he saw two black males
13 standing outside arguing. That's what brought it to his
14 attention is that they appeared to be arguing, so he paid
15 attention to them. Not only did he pay attention and look
16 and see the face of the one that he has identified, but it
17 got his attention to such an extent that he made the block
18 and came back to get another look at them. He was paying
19 attention. He was looking because they had gotten his
20 attention because it appeared that they were arguing.

21 He didn't know what was fixing to happen at the
22 store. All he knew was that there were two black males out
23 there that appeared to be arguing, and he was paying
24 attention to them. He said he thought he could identify the
25 person. He wasn't coming up there saying, Oh, I know I can
26 identify somebody. He said, I think I can identify the
27 person.

28 I think it is very important that they showed him
29 two separate photo lineups. If this were a person that was

1 attempting to come in and just say I saw who did it, when
2 they showed him that first lineup, he would have picked
3 somebody out and said, that is him. He didn't do that. He
4 looked at one and said, this person has some of the same
5 characteristics. He did not say that was the person. He
6 said they had some of the same characteristics.

7 He was shown the second lineup which had this
8 Defendant's picture in it, number 4, a random number in
9 there. He wasn't put number one or anything like that to try
10 to draw attention to him. Mr. Collins went straight to that
11 picture, and he said, "I think that's him. It looks like
12 him," and he later said, "That is the person that I saw in
13 front of Tardy Furniture." And he told this Court that that
14 is the person, and he will always believe that that is the
15 person that he saw in front of Tardy Furniture. If that is
16 not positive, I don't know what could be.

17 The courts on many occasions in reference to photo
18 lineups have said that there is no such thing as a perfect
19 photo lineup. We have even had cases where we had one person
20 in a photo lineup that had initials carved in the back of his
21 hair. You can't find somebody identical to that to put in a
22 photo lineup. So as Wayne Miller attempted to do, he took
23 the photos that were available to him, attempted to get black
24 males that were similar in as much characteristics as he
25 could put them, and of basically the same age, which if there
26 is any age difference in these people, I can't tell it by
27 looking at it because I can't tell what any of the ages of
28 the people in these photographs are. It's not something
29 obvious where you have got a 20 year old and an 80 year old.

1 It's not anything that would bring attention to any one
2 person in there.

3 As a matter of fact, if you wanted to, you could
4 say that any one picture in that might could bring attention
5 to somebody else. One may be a little closer up. One may be
6 a little further away. Nobody indicated you are supposed to
7 pick out the one that is the closest. Nobody in any way
8 attempted to influence him, which John Johnson testified that
9 they never in any way attempted to do that. Wayne Miller
10 testified that they never attempted in any way to do that,
11 but what is the most important is that Porky Collins, Charles
12 "Porky" Collins testified that they never tried in any way
13 to influence him on who to pick out. As a matter of fact, as
14 he specifically said up here today, it wouldn't have done any
15 good if they had because he wasn't going to do what somebody
16 else told him to do. He was going to do what he saw, and
17 that is exactly what he did. He, as he explained today,
18 identified this Defendant from being able to see his face in
19 front of Tardy Furniture.

20 That is just one element. He is not sitting up
21 here testifying I saw him kill four people. He is saying
22 this is the person, one of the two people I saw in front of
23 Tardy Furniture, and that is all that he is testifying to.
24 He is not trying to add anything to what he saw. There is
25 absolutely nothing in this trial, either from the photo
26 lineup or the testimony, that even indicates remotely that
27 anyone tried to influence him on who to pick out of that
28 lineup.

29 Almost immediately, while the investigation was

1 still going on - and it was while the bodies were still in
2 the store - Porky Collins told law enforcement officials what
3 he had seen. They made some notes of it at that point, but
4 as Mr. Johnson testified, at that point nobody knew what was
5 relevant and what wasn't. They were trying to get bits and
6 pieces to put together a picture and see who the suspect
7 would be. Nobody was trying to point a finger at this
8 Defendant. Nobody was trying to point the finger at anybody,
9 just trying to find out what happened.

10 This was one piece of evidence that they followed
11 up on. They showed him the photo lineup as soon as they
12 could, and he identified this person. And in the courtroom
13 today he has identified this Defendant. He has said that
14 that person is the person that he saw in front of the store,
15 and he will believe that for the rest of his life. And
16 there is no indication that anybody has influenced him.
17 There is no indication that that identification is from
18 anything other than his ability to observe the Defendant and
19 see his face at that time. There was a high level of
20 certainty in that.

21 There was also an indication that he had a reason
22 to be paying attention. We are not talking about somebody
23 just driving down the road and glancing and saying, well, I
24 saw somebody out of the corner of my eye, but I didn't pay
25 any attention to what was going on. He noticed them because
26 of a specific incident. If they had not been arguing or what
27 he thought was an argument, he may have not paid enough
28 attention to be able to identify him, but he did.

29 As he clearly testified and given statements all

1 along, he did not see the face of the other person. He did
2 not identify the other person, and he is not sitting up here
3 trying to tell us who the other person was. All he is
4 telling us is what he knows.

5 I think it is very clear that as far as what we are
6 on here today, the elements of attempting to suppress a
7 statement are clear. Was this identification made because of
8 some undue influence? Did somebody, as some cases show, did
9 somebody say, that's the person right there? Did somebody
10 put a black male in a lineup with five white males? Is there
11 anything that would stand out that would point to him? And
12 this was not an in person lineup, but if it was, was one of
13 them six feet tall and the rest of them three feet tall?
14 None of this is there, and the photos, I have seen plenty of
15 photo lineups where they could not find all head shots. Some
16 of them would be full body shots. Some would be head shots.
17 That I don't think is anything that would hurt, but in this
18 case all of these are head shots. I think this was a very
19 fair photo lineup. He was shown two separate photo lineups,
20 and the key to the whole thing is his testimony that he is
21 identifying him because of his ability to observe him, that
22 that is the person that he saw.

23 Thank you, Your Honor.

24 BY MR. LUMUMBA: Counsel made no reference to
25 any of the points that the case law indicate need
26 to be considered and satisfied. I already listed
27 those: Opportunity to view the person at the time
28 of the event, degree of attention, accuracy of
29 prior description, level of certainty, and time

1 elapsed. Now he may, time elapsed-- I don't know
2 if I mentioned time elapsed, but it makes a
3 difference.

4 **BY THE COURT:** Let me see that. I'm going to
5 give it back.

6 BY MR. HORAN: What is the cite on that? It's
7 the same elements. What is the cite?

8 **BY THE COURT:** Well, I just want to take a
9 look at it.

10 BY MR. LUMUMBA: 667 So.2d.

11 BY MR. HORAN: It's Gray?

12 BY MR. LUMUMBA: No, it's not Gray. That is
13 not the Gray case. This is Gray right here.

14 BY MR. HORAN: All right. Let me see it.

15 BY MR. LUMUMBA: May I go to the rest room?

16 **BY THE COURT:** Go ahead because I'm going to
17 read this real quick.

18 (Off the record while the Court read cases
19 furnished by Mr. Lumumba.)

20 **BY THE COURT:** Okay, Mr. Lumumba, I'm ready.

21 BY MR. LUMUMBA: That is essentially my
22 argument.

23 BY MR. HORAN: Is that all you have?

24 Your Honor, I have one thing I wanted to point
25 out to the Court's attention. Those factors that
26 he is considering and he is talking about aren't
27 factors that this Court is to consider as to
28 whether or not a photo lineup is suggestive or
29 not. Those are factors that the Court has to

1 consider if the Court were to find it was a
2 suggestive photo lineup and determine whether or
3 not the in court identification would be proper or
4 not.

5 **BY THE COURT:** But doesn't one lead to the
6 other?

7 BY MR. HORAN: No, not necessarily. Whether
8 or not the time, the amount of time that he had to
9 look at this individual, all of that kind of stuff
10 has absolutely nothing to do with whether or not
11 there is a constitutional problem with the photo
12 lineup. The Court could hold that it was an
13 impermissible photo lineup and still not suppress
14 the in court identification based on those five
15 factors. That's what those factors are for. In
16 fact, some courts allow jury instruction as to
17 those particular factors. That has nothing to do
18 with-- that law has something to do with an in
19 court identification.

20 **BY THE COURT:** You are correct in that.

21 BY MR. HORAN: Whether or not it was an
22 illegal show or something like that. That is not
23 what we are here about today.

24 **BY THE COURT:** Okay. The Court finds that
25 there has nothing been done by the officers
26 involved, Mr. Johnson or Mr. Miller, which are the
27 only officers who have testified. There is no
28 evidence either from them or Mr. Collins that would
29 indicate that they influenced this identification

1 at all, and so there has not been that type of
2 influence on it. Mr. Collins was presented with
3 two lineups which amounted to, I believe, a total
4 of twelve people. In that, on the first lineup
5 which did not include the Defendant, he found that
6 there was a person of, that he had said had some of
7 the characteristics. And then on the second lineup
8 he, according to the testimony, immediately
9 identified Mr. Flowers as being the person that he
10 thought was the one that was at the scene.

11 The second lineup consisted of six
12 individuals, five of which are of lighter skin
13 complexion than Mr. Flowers, so he is distinctive
14 in that regard. However, the description that was
15 given to the officers was of one of a light
16 complexion, and therefore, if there was any
17 suggestion in this lineup, it would be a lineup
18 that would suggest that Mr. Flowers was not the
19 one.

20 So there is nothing by these pictures that
21 suggests that. And therefore, I don't place any
22 credibility on that. The other things about his
23 head, the facts are just not, they are not borne
24 out by the exhibit or by the photographs that I
25 have got.

26 He obviously had an opportunity to view this
27 person as about the time the event occurred. He
28 not only viewed him once; he rounded the corner and
29 viewed him twice. His degree of attention was

1 certainly such-- when he made the second trip
2 around, that answers the degree of attention
3 question.

4 I don't know if he had any prior
5 identification. I don't think that may be relevant
6 to this hearing anyhow, but he had no prior
7 identification. His level of certainty was that he
8 immediately picked out this person when he saw the
9 second lineup as opposed to what he did when he saw
10 the first lineup. And the length of time, I don't
11 think is a factor in this particular case.

12 Based on these, on the evidence that is before
13 the Court, the Court finds that the Motion to
14 Suppress the out of court identification is not
15 well taken and should be overruled. And there is
16 certainly a question as to whether or not his
17 credibility or reliability which can be presented
18 to the jury, and that certainly will be opportunity
19 for the Defendant to do that at trial. But I
20 overrule that Motion, and the State can submit an
21 order to that effect.

22 BY MR. LUMUMBA: I have got--

23 BY MR. EVANS: Is that all?

24 BY MR. LUMUMBA: No, just a short, short.

25 **BY THE COURT:** Okay.

26 BY MR. LUMUMBA: I do have the jury
27 questionnaire from Hinds County.

28 **BY THE COURT:** Okay. Would y'all, could y'all
29 quickly look at that and see if y'all can agree on

1 that? And we will be through. Mr. Freelon, I will
2 give you that back.

3 (Counsel discussed the questionnaire with each
4 other off the record and then with the Court.
5 There were no further proceedings on the record on
6 this date of 1/6/99.)

1 IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI

2
3 FIRST JUDICIAL DISTRICT

4
5 STATE OF MISSISSIPPI

6
7 v. Cause No. B2401-98-00960

8
9 CURTIS GIOVANNI FLOWERS

10
11 *****
12 TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE DURING THE TRIAL
13 OF THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE
14 JUDGE CLARENCE E. MORGAN, III, CIRCUIT JUDGE OF THE FIFTH
15 CIRCUIT COURT DISTRICT OF THE STATE OF MISSISSIPPI AND
16 SPECIAL JUDGE ON THIS CASE BY VIRTUE OF CHANGE OF VENUE,
17 HEARD IN GULFPORT, MISSISSIPPI, ON MARCH 22, 23, 24, 25, 26,
18 27, 29, 30, AND 31, 1999.

19 *****

20 APPEARANCES:

21
22 Present and Representing the State of Mississippi:

23
24 HONORABLE DOUG EVANS

25 HONORABLE KEVIN HORAN

26 HONORABLE WALTER BLECK

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29 Grenada, Mississippi 38902

APPEARANCES CONTINUED:

Present and Representing the Defendant:

HONORABLE CHOKWE LUMUMBA

HONORABLE HARVEY FREELON

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Reported by Linda F. Burchfield, C.S.R. #1019

1 (ON MARCH 22, 1999, THE PROSPECTIVE JURORS
2 WERE SEATED IN THE COURTROOM AND WITH ONLY THE CLERK, THE
3 BAILIFFS, AND THE COURT REPORTER PRESENT, THE CLERK EXPLAINED
4 TO THE JURORS HOW NAMES ARE DRAWN FROM THE VOTER REGISTRATION
5 ROLLS AND THEN TOOK UP ANY JUROR INFORMATION CARDS THAT HAD
6 NOT ALREADY BEEN TURNED IN. THEN THERE WAS THE FOLLOWING:)

7 BY THE CLERK: There are several questions I
8 have to ask you to qualify you as jurors, and I
9 don't make these questions up. They are questions
10 that have been set out by the Legislature since the
11 Constitution in the 1800's, and you will probably
12 see that some of them are outdated and need to be
13 changed. But they are questions that we have to
14 ask to qualify you. So Judge Morgan asked me to do
15 a couple of these procedures before he takes the
16 bench. The first one is I'm going to have to ask
17 you to stand and take the oath to be qualified.
18 Please raise your right hand. Do you and each of
19 you solemnly swear or affirm that you will true and
20 correct answer make to such questions that shall be
21 propounded to you by the Court touching your
22 qualifications as jurors, so help you God?

23 BY THE JURORS: I do.

24 BY THE CLERK: You may be seated. It is very
25 important that if you need to prove your attendance
26 here today that you check that, and at the end of
27 the week or in state court, in Mississippi you are
28 only summonsed for one week only. And at the end
29 of that week we will issue you a jury warrant to

1 get paid as well as your certificate if you need
2 that to prove your attendance. You are paid \$25.00
3 a day, and it used to be fifteen. Some states,
4 California pays five. So I know it is not, it
5 compensates a little bit, but it is a civic duty,
6 and without you coming and participating in the
7 judicial system, we would actually have to shut the
8 doors. So you are the most important part of this
9 system. Okay.

10 Judge Morgan asked me to ask; we have had
11 several already who sent in requests and filled out
12 affidavits of citizens that, the only ones that can
13 actually claim an exemption are citizens who are
14 over 65 years of age. It used to be doctors and
15 lawyers and teachers were excused, but the
16 Legislature took that out, and the only ones that
17 can actually claim an exemption are citizens over
18 65. But the Court encourages you to serve because
19 you usually have a lot of life experiences and
20 usually make good jurors. But at this time if you
21 are over 65 years of age and you do not wish to
22 serve, please raise your hand. (No response.)
23 Okay. Thank you very much.

24 All right, and if anyone is in here that has,
25 that is under a doctor's care and is physically
26 cannot serve, you can fill out an affidavit at this
27 time. Is there anyone in that category? Yes,
28 ma'am. What we need you to do, if you are
29 physically under the doctor's care and you

1 physically cannot serve, please come up, and we
2 will give you an affidavit to fill out.

3 (Five jurors come forward.)

4 BY THE CLERK: Does anyone have any questions
5 about what is going to happen today? Okay, Judge
6 Morgan is going to come out on the bench, and he is
7 going to take the bench, and he is going to explain
8 the remaining procedure. No questions? Yes, sir.

9 BY UNIDENTIFIED JUROR: If we have other
10 questions or excuses, just hold on to it?

11 BY THE CLERK: Yes. Judge Morgan is going
12 to-- if you have-- I noticed one lady has her
13 excuse with her. A couple of them brought their
14 excuses with them, and Judge Morgan will get into
15 the remaining excuses when he takes the bench.

16 (Pause while a few jurors filled out the
17 medical excuse forms, and the Clerk left the
18 courtroom to confer with the Court. Upon the
19 Clerk's return to the courtroom, there was the
20 following:)

21 BY THE CLERK: He said you could have a
22 comfort break. Don't leave the courthouse. Just,
23 you know, there is restrooms on either end of this
24 floor, and then there is drink machines and things
25 downstairs. But report back in here and have a
26 seat where you are seated now at 9:30.

27 (UPON MR. LUMUMBA'S ARRIVAL, COURT WAS OPENED
28 WITH ALL OF THE STATE'S COUNSEL PRESENT, MR.
29 LUMUMBA PRESENT, THE DEFENDANT PRESENT, AND THE

1 JURY PANEL:)

2 BY THE COURT: Good morning. How are y'all?
3 My name is Clarence Morgan, and I am from
4 Kosciusko, and you have been called here to try a
5 case that we have had to move down here. From time
6 to time it becomes necessary that cases get moved
7 from one place to another. There will be a time
8 maybe when one from Harrison County has to be moved
9 to Attala County where I am from, and we will go
10 through that same procedure up there.

11 As I say, this is the only case that you are
12 called for so whoever serves on this case-- I mean
13 whoever does not serve on this case will be
14 through. Whoever does serve on it will be here
15 until we get through. I find in my opinion that
16 the two most important things that citizens are
17 required to do in this country are to vote and to
18 serve on juries. And because you vote, you are
19 called to serve on juries. That's why you are here
20 today. It is necessary to have juries for Circuit
21 Court to work. We can't work without it. Juries
22 get to decide the facts, and I get to decide the
23 law in a particular case. But I have to have
24 juries willing and able to serve in order for me to
25 get the business of the Court done or for any of
26 your judges down here to get the business of the
27 Court done.

28 This is a case that originated in Montgomery
29 County. It's not a case in Harrison County, but it

1 is important to everybody involved as if it was a
2 Harrison County case, and just because it is from
3 Montgomery makes it no less important to you as it
4 does the folks in Montgomery County.

5 Now we are going to go through some jury
6 qualifications here. There are certain legal
7 qualifications you must meet in order to serve on a
8 jury in this state. I'm going to go over those
9 with you, and if they apply to you, you need to
10 raise your hand, and I will recognize you. And if
11 you do not meet the qualifications, I'm going to
12 excuse you. Once we get through those
13 qualifications, then I'm going to have-- there are
14 some legal reasons that I can allow people to be
15 excused from jury service. Now you must understand
16 that these legal reasons are provided by statute,
17 and I am bound by what they say. And I will try to
18 accommodate you if I can, but if it does not-- you
19 may have a very valid reason you cannot serve, but
20 if it does not meet the legal standard, then I'm
21 not going to be able to release you or excuse you
22 from jury service because of that reason.

23 This is a capital case that we have. I
24 anticipate this case taking a week to try. Those
25 of you who serve on the jury will be sequestered
26 for the period of time that you are on that jury.
27 Being sequestered means that you will be here while
28 we are holding court sessions. You will be in the
29 charge of bailiffs when we are not. You will be

1 housed at the Holiday Inn, and you will be fed by
2 the state and taken care of that way. But you will
3 not be allowed-- it's not like when we are trying a
4 burglary case where you could go home every night.
5 It will be necessary that you stay.

6 Now I'm going to go over those qualifications
7 with you. If they apply to you, you let me know.
8 In order to serve on a jury in this state, you must
9 be at least 21 years of age. You must be able to
10 read and write. In this case you must be a
11 registered voter of Harrison County. You must not
12 have been convicted of a felony. You cannot have
13 been convicted of the unlawful sale of intoxicating
14 liquors within the last five years. You cannot be
15 a common gambler nor a habitual drunkard. You must
16 not have served on a jury within the last two
17 years, and you must not have a case pending in this
18 court. Obviously, since you are here just for this
19 one case, the case pending in this court would mean
20 if you had any connection to this case at all.

21 Do any of those apply to anybody? Yes, sir.
22 What is your name, sir?

23 BY JUROR JAMES M. OVERSTREET: James M.
24 Overstreet, and I do frequent the casinos here.

25 (Laughter.)

26 BY THE COURT: All right. You know that is
27 one of those questions that I think they ought to
28 eliminate. It used to be relevant, but it's not.
29 Thank you, sir.

1 Yes, ma'am.

2 BY JUROR: I served last year at this time on
3 a burglary, but it was, he decided to plead guilty
4 during the middle of it. Does that count?

5 BY THE COURT: Okay, were you actually sitting
6 in the jury box?

7 BY JUROR: Yes sir.

8 BY THE COURT: Okay, what is your name, ma'am?

9 BY JUROR: Brenda Hedrick.

10 BY THE COURT: All right, Ms. Hedrick, you are
11 excused.

12 I think this has already been done, but I'm
13 going to ask it again. If there is anybody over
14 65, they can claim that as an exemption from jury
15 service. I think y'all have already gone through
16 that.

17 If you work for the Department of Corrections,
18 you can claim that as an excuse from jury service.
19 Yes, sir.

20 BY JUROR: Rupert Lacy. I run a regional
21 county facility, and I have got 250 state inmates
22 in it.

23 BY THE COURT: All right, you want to claim
24 that exemption?

25 BY JUROR: Yes, sir.

26 BY THE COURT: All right, you are excused.

27 (Rupert H. Lacy was excused.)

28 BY THE COURT: Yes, ma'am.

29 BY JUROR: I work at the County Jail. Can I

1 be excused?

2 **BY THE COURT:** That does not disqualify you.
3 You have to be a member of the Department of
4 Corrections. That may get you out though.

5 Okay, I believe we have also gone through
6 this, but let me go through it again. Is anybody,
7 everybody that had a doctor's excuse, I assume has
8 given that to Ms. Parker now; is that correct?

9 Is there anybody who has somebody in their
10 family who is so sick that it is necessary for you
11 to take care of them, and there is nobody else to
12 take care of them. (Several hands go up.) Okay,
13 let's start over here. Yes, ma'am.

14 **BY A JUROR:** My mother just got out of the
15 hospital with a bypass, and there is nobody else to
16 take care of her.

17 **BY THE COURT:** Okay, and your name, ma'am?

18 **BY A JUROR:** Kathy Shavers.

19 **BY THE COURT:** Okay, Ms. Shavers. Who is
20 taking care of her now?

21 **BY MS. SHAVERS:** She is home in bed right
22 now. The kids are in school, you know, but they
23 would be there after school.

24 **BY THE COURT:** Okay, I'm going to excuse you.

25 **BY MS. SHAVERS:** Okay, thank you.

26 **BY THE COURT:** Yes, ma'am.

27 **BY A JUROR:** My son is a diabetic.

28 **BY THE COURT:** Okay, I understand about that
29 because mine is too. Is there any particular

1 reason though that he has to have care all the
2 time? I mean he takes his own shots and stuff,
3 doesn't he?

4 BY A JUROR: Sometimes.

5 BY THE COURT: Okay. Is there anybody else to
6 take care of him?

7 BY A JUROR: Well, his dad be in and out.

8 BY THE COURT: Okay, I'm going to ask you to
9 stay, ma'am.

10 BY A JUROR: My name is Jamie Alexander. My
11 husband is on the heart transplant list at Ochsner
12 Hospital. I have got a letter from Ochsner's
13 saying we could be called at any time.

14 BY THE COURT: Okay. And you don't know
15 whether that will be this week or next week?

16 BY JUROR MS. ALEXANDER: Oh, no. We have, I
17 mean spur of the moment. We have only minutes to
18 get to Ochsner's.

19 BY THE COURT: And your name, ma'am?

20 BY JUROR MS. ALEXANDER: Jamie Alexander.

21 BY THE COURT: All right, Ms. Alexander, you
22 are excused.

23 (Juror Jamie Alexander was excused.)

24 BY THE COURT: Yes?

25 BY A JUROR: My name is George Jackson. My
26 wife is a diabetic, and she is on peritoneal
27 dialysis at home. She is legally blind, and I have
28 got no one else at home to take care of her.

29 BY THE COURT: All right, you are excused.

1 (Juror George Jackson was excused.)

2 **BY THE COURT:** Yes, ma'am.

3 BY A JUROR: My mom is a dialysis patient.
4 She goes three times a week, and I take care of
5 her. And my son is also under a lot of medical
6 treatment, and we have a very important doctor's
7 appointment tomorrow.

8 **BY THE COURT:** He has got an important
9 doctor's appointment tomorrow?

10 BY A JUROR: Uh-huh.

11 **BY THE COURT:** Is there anybody else to take
12 your mother to dialysis?

13 BY A JUROR: No. I'm the one-- she lives
14 with me, and I have been taking her every morning.

15 **BY THE COURT:** Okay. All right, ma'am. Your
16 name?

17 BY A JUROR: Dorothy Harper.

18 **BY THE COURT:** Okay, you are excused.

19 (Juror Dorothy Harper was excused.)

20 BY A JUROR: My mother has dialysis three
21 times a week, and I feed her every night because
22 she is not able to cook.

23 **BY THE COURT:** She is not able to cook?

24 BY A JUROR: No, I try to take care of
25 everybody.

26 **BY THE COURT:** Okay, and you feed her every
27 night, go feed, cook for her?

28 BY A JUROR: Yes.

29 **BY THE COURT:** What is your name, ma'am?

1 BY A JUROR: Betty Jo Bishop.

2 BY THE COURT: You are excused.

3 (Juror Betty Jo Bishop was excused.)

4 BY THE COURT: Yes, ma'am.

5 BY A JUROR: My grandmother is in intensive
6 care in the hospital, and I have been sitting with
7 her taking turns with my mom. They don't expect
8 her to make it much longer.

9 BY THE COURT: Okay. What is your name,
10 ma'am?

11 BY A JUROR: Elizabeth Douglas.

12 BY THE COURT: Okay, Ms. Douglas. You are
13 excused.

14 (Juror Elizabeth Douglas was excused.)

15 BY THE COURT: Yes, sir.

16 BY A JUROR, EUGENE CROCKETT, JR.: Judge, I
17 don't know if you consider this a member of my
18 family, but I have a German Shepherd that is so
19 big, and everybody is afraid of it. And I am the
20 only one that can feed him and take care of him.

21 BY THE COURT: Well, I have had that come up
22 before. The fact is I had a lady in Hattiesburg
23 one time that had a dog with diabetes. And I
24 couldn't let her go, and I'm afraid I can't let you
25 go for the dog.

26 Yes, ma'am.

27 BY A JUROR: You said it would take a week.
28 This would be only if it dragged on. I am care-
29 taker for my mother who is in assisted living

1 retirement community in New Orleans. I do her
2 medications, and they are done for two weeks. But
3 after that point, someone would have to do them.
4 And I am really the only one to take a lot of them,
5 to go in and set them up for the daily.

6 **BY THE COURT:** Okay. Well, I am fairly
7 confident this will not take two weeks.

8 **BY A JUROR:** What if you have small kids and
9 you don't have anyone to take care of them if you
10 have to stay overnight?

11 **BY THE COURT:** That would be something; you
12 have got nobody that can take care of them at
13 night?

14 **BY A JUROR:** Right.

15 **BY THE COURT:** All right. What is your name,
16 ma'am?

17 **BY A JUROR:** Angela Cook.

18 **BY THE COURT:** Okay, Ms. Cook, you are
19 excused.

20 (Juror Angela Cook was excused. Several more
21 hands go up. Laughter.)

22 **BY THE COURT:** Now let me say before all the
23 hands go up, I understand this is going to be
24 inconvenient to everybody. I mean there is nobody
25 sitting here at all that this is going to be a
26 convenient thing to including the lawyers and the
27 Judge. But if there is somebody that can take care
28 of your children and all like that, they just need
29 to do that while we do this. So you need to take

1 that into account before you raise your hand. Yes,
2 ma'am.

3 BY A JUROR: My husband is self-employed. And
4 if he is taking care of my children, he is not
5 working, so it would be a financial hardship on us
6 if he doesn't work.

7 BY THE COURT: Okay. His business would shut
8 down if you are here?

9 BY A JUROR: He is his only employee. He
10 starts a new contract at Treasure Bay. I can have
11 someone watch my children today, but I won't after
12 today.

13 BY THE COURT: Okay, what is your name, ma'am?

14 BY A JUROR: Donna Broussard.

15 BY THE COURT: Okay, Ms. Broussard.

16 (Juror Donna Broussard was excused.)

17 BY THE COURT: Yes, sir.

18 BY A JUROR: My wife is a full time student at
19 South Alabama, and she don't get home until 8:00 or
20 9:00 at night, and I have nobody to pick up my son
21 from school and watch him at night.

22 BY THE COURT: Okay. Who is keeping the child
23 now? Is he in school?

24 BY A JUROR: He is in school right now.

25 BY THE COURT: Okay. Your name, sir?

26 BY A JUROR: Glynn Maulden.

27 BY THE COURT: Okay, Mr. Maulden, you are
28 excused.

29 (Juror Darrell Glynn Maulden was excused.)

1 **BY THE COURT:** Yes, ma'am.

2 BY A JUROR: My husband is also
3 self-employed. He is a patrolling land manager,
4 works out of town every Monday through Friday. I
5 have got a 3 year old and a one year old right
6 here, and I--

7 **BY THE COURT:** You have got them with you?

8 BY A JUROR: I have got my one year old with
9 me. My three year old--

10 **BY THE COURT:** --That excuse works every
11 time. (Laughter.) Your name, ma'am?

12 BY A JUROR: Michelle Cooper.

13 **BY THE COURT:** Okay, Ms. Cooper, you are
14 excused.

15 (Juror Myra Michelle Cooper was excused.)

16 **BY THE COURT:** Yes, sir.

17 BY A JUROR: I am self-employed, and I own my
18 own business. If I am not there--

19 **BY THE COURT:** It closes down?

20 BY A JUROR: It sho' does.

21 **BY THE COURT:** That is one of the excuses I
22 can-- I'm not to that, but I can excuse you for
23 that. What is your name, sir?

24 BY A JUROR: William Barr.

25 **BY THE COURT:** Barr?

26 BY JUROR BARR: B A R R.

27 **BY THE COURT:** Thank you, sir. You are
28 excused.

29 (Juror William Barr was excused.)

1 **BY THE COURT:** Yes, ma'am.

2 BY A JUROR: I have two children that are in
3 school right now, but when they get home this
4 afternoon, there won't be anyone there to take care
5 of them. My husband is a fireman for the City of
6 Gulfport. He has a meeting today. He works 24
7 hour shifts and then 48 off. And I have a son that
8 is going to be graduating from fire fighting school
9 this Friday.

10 **BY THE COURT:** So it is nobody to take care of
11 them?

12 BY A JUROR: No, sir. My parents are elderly,
13 and they have been ill. I have a sister and my
14 brother-in-law; they both work at night, and my
15 brother is on call from his job.

16 **BY THE COURT:** Okay, your name?

17 BY A JUROR: Nancy Lopez.

18 **BY THE COURT:** Okay, you are excused, ma'am.

19 (Juror Nancy Lopez was excused.)

20 **BY THE COURT:** Yes, ma'am.

21 BY A JUROR: My name is Carrie McGhee. I am a
22 dental hygienist, and I just started this job. We
23 are having to cancel all my patients. This is how
24 I make my living is by seeing the patients I see,
25 so it's going to be a financial hardship.

26 **BY THE COURT:** Are you paid by the patient?

27 BY JUROR MS. MCGHEE: Right.

28 **BY THE COURT:** Let me come back to that. I
29 will come back to that in a minute.

1 BY JUROR MS. MCGHEE: Okay.

2 BY THE COURT: Okay, anybody. Whichever one
3 has got your hand up. I can't see that far back.
4 Yes, ma'am.

5 BY A JUROR: My name is Michelle Funderburg.
6 I have two small children at home, no one to take
7 care of them.

8 BY THE COURT: Okay. Who is taking care of
9 them now?

10 BY JUROR MS. FUNDERBURG: My husband is off
11 today, but he works at the Sheriff's Department, so
12 he will work--

13 BY THE COURT: Okay, your name, ma'am?

14 BY JUROR MS. FUNDERBURG: Michelle Funderburg.

15 BY THE COURT: Okay, I'm sorry. You are
16 excused.

17 (Juror Anne Michelle Funderburg was excused.)

18 BY THE COURT: Yes, ma'am.

19 BY A JUROR: I have two children who are also
20 in school, but when they get home, there is nobody
21 there for them. My son is learning disabled, so it
22 is not like he can tell time or get up in the
23 morning to go to school by himself.

24 BY THE COURT: Okay, and there is nobody else
25 to do that?

26 BY A JUROR: No, sir. My father lives down
27 the road, but I am also his transportation. I cook
28 his meals at night too.

29 BY THE COURT: Okay. I'm sorry; did I get

1 your name?

2 BY A JUROR: Jo Lena Seay.

3 BY THE COURT: Okay, you are excused.

4 BY THE COURT REPORTER: What was her name?

5 BY THE COURT: I'm sorry; they did not get
6 your last name, ma'am.

7 BY JUROR MS. SEAY: Seay, S E A Y.

8 BY THE COURT: Thank you.

9 (Juror Jo Lena Seay was excused.)

10 BY A JUROR: My name is Tammy Garner. I have
11 a 9 month old at home. I have a baby sitter that
12 keeps her full time while I work, but I don't have
13 anybody to keep her at night.

14 BY THE COURT: There is nobody to keep the
15 child at night?

16 BY JUROR MS. GARNER: I am a single mother.

17 BY THE COURT: Okay, your name, ma'am?

18 BY JUROR MS. GARNER: Tammy Garner.

19 BY THE COURT: Thank you, ma'am. You are
20 excused.

21 (Juror Tammy Garner was excused.)

22 BY THE COURT: Yes, ma'am.

23 BY A JUROR: I have my 3 year old twins with
24 me, and I have no one to keep them.

25 BY THE COURT: Like I said, that one works.
26 Your name?

27 BY A JUROR: Mary Martha Glenn Shank. Y'all
28 have got Glenn on my voter thing.

29 BY THE COURT: Y'all don't go out and spread

1 the word now that anytime you want out of jury
2 service, bring your children with you. Judge
3 Walker will be on me.

4 (Laughter. Juror Mary Martha Glenn was
5 excused.)

6 **BY THE COURT:** Yes.

7 BY A JUROR: My name is Clarence McDaniel. I
8 am self-employed, and I am my only employee, so
9 it's a financial hardship if I have to serve.

10 **BY THE COURT:** Okay, I'm going to come back to
11 that in just a minute.

12 All right, yes, ma'am.

13 BY A JUROR: My name is Shirley Valdez. I'm a
14 Civil Court Administrator for the four Circuit
15 Judges here, and I have a small child, and my
16 husband is also an officer with the Sheriff's
17 Department.

18 **BY THE COURT:** Okay, I'm going to excuse you.

19 (Juror Shirley Valdez was excused.)

20 **BY THE COURT:** Yes, ma'am.

21 BY A JUROR: My name is Susan Pearson, and I
22 have three small children. They are in school
23 today, but my husband is self-employed, and if he
24 is not working, there is nobody there.

25 **BY THE COURT:** Does he keep them if you are
26 not, if you are here; is that right?

27 BY JUROR MS. PEARSON: No, they are in school.

28 **BY THE COURT:** They are in school?

29 BY JUROR MS. PEARSON: Yes, sir.

1 **BY THE COURT:** Who keeps them after school?

2 BY JUROR MS. PEARSON: Me.

3 **BY THE COURT:** Okay, there is nobody else to
4 do that?

5 BY JUROR MS. PEARSON: No, sir.

6 **BY THE COURT:** Okay, your name; I'm sorry?

7 BY JUROR MS. PEARSON: Susan Pearson.

8 **BY THE COURT:** You are excused.

9 (Juror Susan Pearson was excused.)

10 **BY THE COURT:** Let's go over here. Yes, sir.

11 BY A JUROR: My name is Joe Paola. I am
12 self-employed, and if I'm not out in the field
13 working, there is nothing coming in.

14 **BY THE COURT:** What kind of business?

15 BY JUROR MR. PAOLA: I'm in the fence
16 business.

17 **BY THE COURT:** Okay. And your name, sir?

18 BY JUROR MR. PAOLA: Paola, Joe. Joe Paola.

19 **BY THE COURT:** You are excused.

20 (Juror A. J. Paola, Jr. was excused.)

21 **BY THE COURT:** Yes, sir.

22 BY A JUROR: Yes, Your Honor. My name is
23 Meehan. I am an insurance inspector, and I get
24 paid by the case, and I am also self-employed and
25 run my own business, and I am the sole employee.

26 **BY THE COURT:** Okay, you are excused. Yes,
27 ma'am. Did y'all get-- I'm sorry; I thought y'all
28 got it. Mr. Meehan, give them your name.

29 BY JUROR MR. MEEHAN: Meehan, M E E H A N.

1 (Juror John W. Meehan, III was excused.)

2 **BY THE COURT:** Yes, ma'am. You.

3 BY A JUROR: My name is Janelle Anderson. I
4 have three small children, two at school, and one
5 is at home right now. My fiance had to come home
6 on his lunch break to watch them, and he is also a
7 police officer. I don't know if that matters.

8 **BY THE COURT:** Okay. There is nobody else to
9 keep the children?

10 BY JUROR MS. ANDERSON: No. He works days and
11 I work nights so.

12 **BY THE COURT:** Okay. And your name; I'm
13 sorry?

14 BY JUROR MS. ANDERSON: Janelle Anderson.

15 **BY THE COURT:** Okay, Ms. Anderson, you are
16 excused.

17 (Juror Janelle M. Anderson was excused.)

18 **BY THE COURT:** Yes, ma'am.

19 BY A JUROR: My name is Zenobia Holt, and I
20 own my own business, and when the doors are closed,
21 I make no wage.

22 **BY THE COURT:** What type of business is that?

23 BY JUROR MS. HOLT: Beauty salon.

24 **BY THE COURT:** That is one I get pretty
25 regular too. All right. Did y'all get her name?

26 BY THE CLERK: No, sir.

27 BY JUROR MS. HOLT: Zenobia Holt, H O L T.

28 **BY THE COURT:** You are excused.

29 (Juror Zenobia Holt was excused.)

1 **BY THE COURT:** Yes, ma'am.

2 BY A JUROR: I'm Janice Camps, and I have two
3 young children, and I am concerned about their
4 welfare if we are sequestered. My husband works
5 days, but he also works a couple of nights.

6 **BY THE COURT:** And there is nobody else to
7 take care of them?

8 BY JUROR MS. CAMPS: No, not in the evenings.

9 **BY THE COURT:** Okay. Your name, ma'am?

10 BY JUROR MS. CAMPS: Janice Camps.

11 **BY THE COURT:** Okay, Ms. Camps, you are
12 excused.

13 (Juror Janice Camps was excused.)

14 **BY THE COURT:** Yes, ma'am.

15 BY A JUROR: Yes, sir. My name is Deborah
16 Martin. I have a ten year old son. I have no
17 family that lives here, and my husband works days.
18 I work full time. I work my work schedule so that
19 I can be there to pick up my son after school. And
20 then I work evenings as well when my husband is,
21 when my husband is not working so he can keep
22 them. We don't have any family here locally to
23 help take care of my child, so I have to work my
24 schedule around him, and I have to pick him up
25 after school.

26 **BY THE COURT:** And your name, ma'am?

27 BY JUROR MS. MARTIN: My name is Deborah
28 Martin.

29 **BY THE COURT:** Okay, Ms. Martin. You are

1 excused.

2 (Juror Deborah Martin was excused.)

3 **BY THE COURT:** Yes, ma'am.

4 BY A JUROR: I have a 12 year old daughter,
5 and I am also a single parent. I work during the
6 day. My mother is elderly. She is slightly blind,
7 okay, and my brother take care of her during the
8 day, but at night he works. After that, I am more
9 or less, you know, taking care of her.

10 **BY THE COURT:** And there is nobody but you; is
11 that right?

12 BY A JUROR: Just me. My sister, she works at
13 night also.

14 **BY THE COURT:** Okay. Your name, ma'am?

15 BY A JUROR: My name is Janice Johnson.

16 **BY THE COURT:** Okay, you are excused.

17 (Juror Janice Johnson, I believe listed as
18 Janice Sharpe, was excused.)

19 **BY THE COURT:** Yes, ma'am.

20 BY A JUROR: I am Brenda Winburn. I teach
21 school, and I have two children that are school
22 age. They will be left unattended from like 3:30
23 to 6:30 every night when my husband comes home.
24 May I be excused?

25 **BY THE COURT:** How old are they?

26 BY JUROR MS. WINBURN: They are, one just
27 turned 11, and one is 15.

28 **BY THE COURT:** And one is how old?

29 BY JUROR MS. WINBURN: One is 15.

1 **BY THE COURT:** Okay, the 15 year old can't
2 take care of the 11 year old until--

3 **BY JUROR MS. WINBURN:** I would not, I would
4 not want her to be responsible for the 11 year
5 old. She just turned 11.

6 **BY THE COURT:** There is nobody else that can
7 keep these children?

8 **BY JUROR MS. WINBURN:** No. I have no family
9 here.

10 **BY THE COURT:** Okay. Your name? I'm sorry.

11 **BY JUROR MS. WINBURN:** Brenda Winburn.

12 **BY THE COURT:** All right, Ms. Winburn, you are
13 excused.

14 (Juror Brenda Winburn was excused.)

15 **BY THE COURT:** Yes, ma'am.

16 **BY A JUROR:** May I approach the bench, Your
17 Honor?

18 **BY THE COURT:** You sure can.

19 (Juror approaches the bench.)

20 **BY A JUROR:** If I am chosen today, I have a
21 panic disorder, and I take Pancet and Trazodone.
22 If I am chosen today, will I be able to go home and
23 get my medicine or do they--

24 **BY THE COURT:** --We will get that for you.

25 **BY A JUROR:** You will get it for me?

26 **BY THE COURT:** Yeah, I will make arrangements
27 that you have that.

28 **BY A JUROR:** Okay, then. Thank you.

29 (Juror leaves from the bench.)

1 **BY THE COURT:** Yes, sir.

2 BY A JUROR: I am single. I live on 20
3 acres. I have got four Rotweilers, a bunch of
4 chickens, peacocks. No one that can take care of
5 the dogs.

6 **BY THE COURT:** There is nobody else to take
7 care of them?

8 BY A JUROR: Nobody.

9 **BY THE COURT:** Okay, and you live by
10 yourself?

11 BY A JUROR: Yes, I do.

12 **BY THE COURT:** All right. Your name, sir?

13 BY A JUROR: Gary Sergeant.

14 **BY THE COURT:** All right, you are excused.
15 (Juror Gary Sergeant was excused.)

16 **BY THE COURT:** Yes, ma'am?

17 BY A JUROR: Yes, sir. I have a son disabled
18 that is 12, and I have a husband that is 65 who is
19 epileptic. And I need to be home with my son. I
20 have to read to him every night in order for him to
21 get the knowledge that he needs.

22 **BY THE COURT:** Your name, ma'am?

23 BY A JUROR: Hazel Brown. It could be under
24 McDowell.

25 **BY THE COURT:** Okay, you are excused.
26 (Juror Hazel McDowell was excused.)

27 **BY THE COURT:** Yes, ma'am.

28 BY A JUROR: My name is Jamie Hatcher, and I
29 have a 1 year old that is nursing, so I need to be

1 there to feed her every night. (Laughter).

2 **BY THE COURT:** That is not unusual, but that
3 is the first time I have had that. And your name
4 again, ma'am?

5 BY JUROR MS. HATCHER: Jamie Hatcher.

6 **BY THE COURT:** Okay, you are excused.
7 (Juror Jamie Hatcher was excused.)

8 **BY THE COURT:** Okay.

9 BY A JUROR: May I approach the bench?

10 **BY THE COURT:** You sure can.
11 (Juror approaches the bench.)

12 BY A JUROR: My name is Anita Young, and I am
13 having a root canal done on Thursday. It's giving
14 me pain right now, and the doctor told me to come
15 back if it was giving me problems. If I am not
16 excused, is there any way I can call and get, order
17 me some medicine for pain?

18 **BY THE COURT:** Sure. Yeah, I will make sure
19 that you get whatever you need.
20 (Juror leaves the bench.)

21 **BY THE COURT:** Yes, ma'am.

22 BY A JUROR: My name is Angela Mitchell. I
23 have an 8 year old in school right now, but my
24 husband's job requires him to work evenings, a lot
25 of evenings, and I have no one to watch her. Both
26 of my parents are deceased.

27 **BY THE COURT:** Okay, give me your name again.

28 BY JUROR MS. MITCHELL: Angela Mitchell.

29 **BY THE COURT:** Okay, Ms. Mitchell, you are

1 excused.

2 (Juror Angela Mitchell was excused.)

3 **BY THE COURT:** There was one other hand back
4 here. Yes, ma'am.

5 BY A JUROR: My name is Jeanne Helling. I am
6 self-employed, a one person business. If I'm not
7 there, the doors are closed.

8 **BY THE COURT:** What type of business is it,
9 ma'am?

10 BY JUROR MS. HELLING: Sales business.

11 **BY THE COURT:** Your name again?

12 BY JUROR MS. HELLING: Jeanne Helling.

13 **BY THE COURT:** Okay, you are excused.

14 (Juror Jeanne Helling was excused.)

15 **BY THE COURT:** Yes, ma'am.

16 BY A JUROR: I'm a special ed case manager at
17 LaZanta Elementary, and we only have two special ed
18 teachers, and the other will be gone Tuesday
19 through Thursday of this week. And we have
20 children with emotional disabilities. If neither
21 one of us are there, we kind of run into problems.

22 **BY THE COURT:** Is there nobody that can take
23 your place?

24 BY A JUROR: We do not use subs. They do not
25 get a sub for our classroom. It's a resource
26 room. We have a pull out program. So the
27 principal is not able to get subs for our classes.

28 **BY THE COURT:** Okay. And you are the only one
29 that can do that this week?

1 BY A JUROR: The other one will be gone
2 Tuesday through Thursday; yes, sir.

3 BY THE COURT: Your name, ma'am?

4 BY A JUROR: Katherine Ladner.

5 BY THE COURT: You are excused, Ms. Ladner.
6 (Juror Katherine Ladner was excused.)

7 BY THE COURT: Yes, ma'am.

8 BY A JUROR: My name is Susan Wilson. I just
9 gained employment. I have been employed for four
10 days in a full time job. I have been trying to
11 gain employment and been working as an independent
12 contractor and as a temp for the past two years
13 since my husband passed away. I have two teenage
14 children, and I am the sole provider, although I do
15 receive a little social security pension.

16 BY THE COURT: How old are your children?

17 BY JUROR MS. WILSON: 16 and 19.

18 BY THE COURT: Okay. Well, they can take care
19 of themselves.

20 BY JUROR MS. WILSON: Yeah, that is not my
21 problem. My problem is I have only been working
22 four days, and because it is in show situation, I
23 have to be there for rehearsals. You know, it's a
24 brand new job.

25 BY THE COURT: Okay. Your name again, ma'am?

26 BY JUROR MS. WILSON: Susan Wilson.

27 BY THE COURT: Okay, Ms. Wilson, you are
28 excused.

29 (Juror Susan Wilson was excused.)

1 **BY THE COURT:** Yes, ma'am.

2 BY A JUROR: I am on medication that makes me
3 sleepy, so I don't know if that is.

4 **BY THE COURT:** No, ma'am. That wouldn't
5 necessarily disqualify you. And we are going-- I
6 mean we are not going to work five or six hours at
7 a time. I will take breaks and stuff. I can't
8 hold out either.

9 Yes, ma'am.

10 BY A JUROR: My name is Renee Jenkins, and I
11 am self-employed, and I also work a part time job,
12 and I have two small children.

13 **BY THE COURT:** Okay, what kind of job do you
14 have, ma'am?

15 BY JUROR MS. JENKINS: A trophy and plaque
16 business, and I'm the only one that can run the
17 machines. It's my husband and myself. He does the
18 sales, and I actually put together the trophies and
19 plaques.

20 **BY THE COURT:** Okay. And your name again?

21 BY JUROR MS. JENKINS: Renee Jenkins.

22 **BY THE COURT:** Okay, Ms. Jenkins.

23 (Juror Renee Jenkins was excused.)

24 **BY THE COURT:** Yes, sir.

25 BY A JUROR: Danny Blackmon from Blackmon
26 Trailer Sales. I am a sole proprietor also in a
27 business.

28 BY JUROR MS. JENKINS: Am I excused?

29 **BY THE COURT:** Yes, ma'am; you are excused.

1 It's a trailer--

2 BY JUROR MR. BLACKMON: It's truck trailer
3 distributorship. I just put in seven months ago in
4 the Poplarville area. I am closed by being here.

5 BY THE COURT: You are closed today?

6 BY JUROR MR. BLACKMON: Yes, sir.

7 BY THE COURT: All right, your name?

8 BY JUROR MR. BLACKMON: Danny Blackmon.

9 BY THE COURT: Okay, you are excused.

10 (Juror Danny Blackmon was excused.)

11 BY THE COURT: Yes, sir.

12 BY A FEMALE JUROR: May I approach the bench,
13 please?

14 BY A MALE JUROR: I am Sheldon Detwiler. I am
15 self-employed, one employee. The business is shut
16 down today.

17 BY THE COURT: You are shut down?

18 BY MALE JUROR: Yes, sir.

19 BY THE COURT: Your name, sir?

20 BY JUROR MR. DETWILER: Sheldon Detwiler.

21 BY THE COURT: Okay, you are excused.

22 (Female juror approached the bench.)

23 BY A JUROR: My employer asked me that I give
24 this to you.

25 (Pause while the Court reads a letter.)

26 BY MR. LUMUMBA: Can we approach?

27 BY THE COURT: Sure.

28 (Mr. Lumumba and Mr. Evans approached the
29 bench.)

1 BY A JUROR: I don't mind serving but--

2 BY THE COURT: Is there nobody else that can
3 do this job but you?

4 BY A JUROR: There is other people, but we are
5 just short of staff.

6 BY THE COURT: Okay. I can't excuse you for
7 that.

8 BY A JUROR: Okay. Thank you, sir.

9 (That female juror left the bench.)

10 BY THE COURT: Yes, ma'am.

11 BY A JUROR: May I approach the bench?

12 BY THE COURT: You may. Y'all can come back
13 if you want to.

14 (Juror Teresa M. Finch approached the bench.)

15 BY JUROR MS. FINCH: I didn't want to seem
16 like I had a flimsy excuse. I have children; one
17 of them is 17, so she can watch my children in the
18 afternoon. They do have a problem getting home and
19 that type of thing, but I am sure I have plenty of
20 people who will, you know, help me in that area.

21 BY THE COURT: All right.

22 BY JUROR MS. FINCH: But I had sent you a
23 letter in regard to this week, and I am sure you
24 have already read my letter, but I do volunteer
25 work at my children's school which is like a
26 christian academy, and I teach 17 students music,
27 and I am their only teacher. We have a convention;
28 it's usually held in Kosciusko. I have been in
29 Kosciusko every year for the past several years for

1 this convention. It is through the Christian
2 School Association, and anyway we are having it
3 here locally this year. And that is in two weeks,
4 and I am just, I am up to my ears in trying to get
5 these kids prepared. And I am their only teacher,
6 their only source for this, and it is on a
7 volunteer basis.

8 **BY THE COURT:** All right. Well, let me ask
9 you about this. This is piano?

10 BY JUROR MS. FINCH: No, sir. It involves
11 everything from academics to sports, but my end is
12 music. And what it is, is I have an ensemble. I
13 have a solo ensemble; I have trios; I have duets
14 and soloists, and I teach music to them, and I am
15 preparing them for this competition.

16 **BY THE COURT:** And there is nobody else to do
17 that at all?

18 BY JUROR MS. FINCH: No, sir. I am their
19 teacher. I do have-- I'm not going to lie to you.
20 I do have a minister of music locally who I took
21 all the music to, and I asked him to please come
22 in, you know, and meet with the children this week
23 in case I was sequestered. And he said he would do
24 that. And you know, if it is only going to be the
25 week, maybe I can handle it. But the problem is
26 you have got students who have never worked with
27 anybody else but me, and they just get all
28 flustered, and it is just really important to
29 them. So it's in your hands.

1 **BY THE COURT:** I realize it is going to be
2 inconvenient, but I need for you to be here. I'm
3 going to ask you to stay if you will, Ms. Finch.

4 **BY JUROR MS. FINCH:** Well, I prayed about it
5 so--

6 **BY THE COURT:** Another type of case or
7 something like that I might could do it, but I'm
8 going to ask you to stay. You may get lucky and
9 not get picked. I'm sorry. Okay.

10 (Ms. Finch leaves the bench.)

11 **BY THE COURT:** Yes.

12 **BY A JUROR:** I just need to ask you. I have a
13 loan closing this afternoon at 3 o'clock on some
14 land that we are buying. The man is coming from
15 out of town that we are buying. Is there any way I
16 can-- it's like right around the corner at 3
17 o'clock-- go close a loan?

18 **BY THE COURT:** How long do you think it is
19 going to take?

20 **BY A JUROR:** Probably about 30 minutes.

21 **BY THE COURT:** Yeah, we can probably do that.
22 I think we can probably do that. I don't think we
23 will be through with what we have got to do by
24 then, but we will try to take a break about 3
25 o'clock, and that way that will let you go do
26 that. Okay?

27 **BY A JUROR:** Okay. Thank you.

28 **BY THE COURT:** Yes, sir.

29 **BY A JUROR:** My name is Andrew Hurst. I am

1 self-employed as a mechanic. My business is shut
2 down right now because I am here.

3 **BY THE COURT:** All right, did y'all get his
4 name?

5 **BY THE CLERK:** No, sir.

6 **BY JUROR MR. HURST:** Andrew Hurst.

7 **BY THE COURT:** You are excused.

8 (Juror Andrew Hurst was excused.)

9 **BY THE COURT:** Yes, sir.

10 **BY A JUROR:** Can I approach the bench?

11 **BY THE COURT:** Yes, sir.

12 (Male juror approached the bench.)

13 **BY JUROR:** I have a letter from my employer.
14 I work for a local financial institution. I am a
15 technology manager for a 13 million dollar project,
16 and part of my duties involve getting the bank
17 prepared for Year 2K readiness. An extended
18 absence could create a problem for the bank. In
19 addition to that, I have a house under construction
20 that requires my daily visit to that.

21 **BY THE COURT:** Do you have a contract?

22 **BY A JUROR:** For the house?

23 **BY THE COURT:** Yeah.

24 **BY A JUROR:** It's under construction right
25 now.

26 **BY THE COURT:** I mean do you have a contractor
27 building it?

28 **BY A JUROR:** Yes, but you have to oversee the
29 contractor to make sure that--

1 (Pause while the Court reads the letter from
2 the juror.)

3 **BY THE COURT:** Mr. Lumumba, do you want to see
4 this?

5 (Pause while Mr. Lumumba reads the letter.)

6 **BY MR. LUMUMBA:** No objection.

7 **BY THE COURT:** I'm going to excuse Mr.
8 Louque. All right.

9 **BY JUROR MR. LOUQUE:** Thank you, Your Honor.

10 (Juror Mr. Dalton Judge Louque was excused.
11 Mr. Louque left the bench, and another man
12 approaches.)

13 **BY A JUROR:** Your Honor, I have no personal
14 problems, but I do have some neighbors who are
15 elderly and both overweight. I am called on
16 regularly for times when they fall. The elderly
17 lady, she is very weak. She gets up to go to bed;
18 her husband helps her. Her knees buckle a lot of
19 times, and I am called on a regular basis.

20 **BY THE COURT:** I can't excuse you for that
21 though. They are not family members, so I can't do
22 that.

23 (Male juror leaves the bench.)

24 **BY ANOTHER MALE JUROR:** Judge.

25 **BY THE COURT:** Yes, sir.

26 (Another male juror approaches.)

27 **BY A MALE JUROR:** Judge, I am a self-employed
28 attorney, and I have many cases I--

29 **BY THE COURT:** I have been there and done

1 that.

2 BY JUROR: But I don't think I could be death
3 qualified, so you are going to have to let me go
4 for cause later anyway.

5 BY THE COURT: Okay. Your name, sir?

6 BY A JUROR: Mack Bethea.

7 BY THE COURT: Okay, you are excused.

8 BY MR. LUMUMBA: What was that name?

9 BY THE COURT: He is an attorney,
10 self-employed attorney. Mr. McVae, I think.

11 (Juror Mack Bethea leaves the bench, and
12 another male juror approaches.)

13 BY A JUROR: Your Honor, about 6 months ago I
14 had a 26 year old black man attempted to murder my
15 father-in-law, and he robbed him. And I just don't
16 feel comfortable on a trial like this.

17 BY THE COURT: Okay. When we get into the
18 voir dire, I'm going to ask that particular
19 question, and you can tell me about it then. That
20 will probably have that effect, but I can't do it
21 at this point. Okay?

22 (Male juror leaves the bench.)

23 BY THE COURT: Anybody else got the, where
24 they have got their own business? Okay. Yes,
25 sir.

26 BY A JUROR: My name is James Mace. I am a
27 physician, solo practitioner. There is no one to
28 take care of my patients.

29 BY THE COURT: All right. Did you get his

1 name?

2 BY THE CLERK: Mace?

3 BY JUROR DR. MACE: M A C E.

4 BY THE COURT: All right, you are excused.

5 (Juror James Mace was excused.)

6 BY THE COURT: Where is the dental hygienist?

7 Okay. Give me your name again.

8 BY A JUROR: Carrie McGhee.

9 BY THE COURT: Okay, Ms. McGhee, you are
10 excused.

11 (Juror Carrie McGhee was excused.)

12 BY THE COURT: Yes, sir.

13 BY A JUROR: I am self-employed, and I seem to
14 be the only one that you didn't let out.

15 BY THE COURT: Have we talked?

16 BY A JUROR: Yeah, we have.

17 BY THE COURT: Okay, what is your job?

18 BY A JUROR: I have a pest control business.

19 BY THE COURT: And there is nobody to do it
20 but you?

21 BY A JUROR: I'm it.

22 BY THE COURT: Okay. Your name, sir?

23 BY A JUROR: Clarence McDaniel.

24 BY THE COURT: Yeah. Okay, Mr. McDaniel. I
25 must have just misunderstood you. I'm sorry. You
26 are excused. Okay.

27 (Juror Mr. C. A. McDaniel was excused.)

28 BY THE COURT: Anybody else got any reason
29 they cannot serve? Yes, sir.

1 BY A JUROR: I am an offshore worker. I have
2 to leave out Thursday to go work on oil rigs. I
3 work for two weeks in, two weeks out.

4 BY THE COURT: All right, and your name, sir?

5 BY A JUROR: Daniel Morgan.

6 BY THE COURT: You are excused.

7 (Juror Mr. Daniel Lee Morgan was excused.)

8 BY A JUROR: Yes, sir. I am a driver. I am
9 the only one that supports myself at all, and if I
10 serve, it is definitely going to put me in a pinch
11 money wise.

12 BY THE COURT: All right, who do you drive
13 for?

14 BY A JUROR: Cardinal Flower Shop.

15 BY THE COURT: You deliver for them?

16 BY A JUROR: Yes, sir.

17 BY THE COURT: Are you paid based on your
18 deliveries?

19 BY A JUROR: I am paid by the hour.

20 BY THE COURT: Okay. Is there anybody else to
21 do that job?

22 BY A JUROR: We have a part time guy, but I
23 have no one else that supports me or gives me any
24 kind of money. I mean I am it.

25 BY THE COURT: All right, and your name?

26 BY A JUROR: Trent Brown.

27 BY THE COURT: You are excused.

28 (Juror Trent Brown was excused.)

29 BY THE COURT: Yes, sir.

1 BY A JUROR: My name is David Dobson. I got a
2 speeding ticket in Hattiesburg about a month ago,
3 and I have court on Friday.

4 BY THE COURT: Okay. They will have to
5 continue that for you, and we will get word to them
6 why you won't be there if you are chosen.
7 Yes, sir.

8 BY A JUROR: My name is Robert Maynard. I
9 work as a dealer in a casino. The basis of my
10 income is on tips. If I am not there to work at
11 all, I make basically less than minimum wage is
12 what the casino pays me.

13 BY THE COURT: Okay. I can't excuse you for
14 that though.

15 Yes, sir.

16 BY A JUROR: My name is Bobby McLeod. I have
17 got a wife and two children at home, and I am the
18 only means of income. I am paid on commission. I
19 paint cars for a living.

20 BY THE COURT: You are paid on commission?

21 BY JUROR MR. McLEOD: And if I don't paint, I
22 don't make no money.

23 BY THE COURT: Okay, you are excused. What is
24 your name?

25 BY JUROR MR. McLEOD: Bobby McLeod, Robert
26 McLeod. Thank you.

27 BY THE COURT: Yes, sir.

28 BY A JUROR: May I approach, sir?

29 (Juror approaches the bench.)

1 BY A JUROR: My sister is having heart surgery
2 in Jackson, Mississippi, tomorrow morning.

3 BY THE COURT: Tomorrow morning?

4 BY A JUROR: Now I'm not going up there, but
5 what is going on is me and my wife are going to be
6 watching her child down here. My wife has night
7 classes on Wednesday and Thursday nights. We have
8 someone else to watch them during the day, but not
9 at night.

10 BY THE COURT: You have nobody to watch those
11 children at night?

12 BY A JUROR: No, sir.

13 BY THE COURT: Your name, sir?

14 BY A JUROR: Jason Serpas.

15 BY THE COURT: Jason Serpas, I'm going to
16 excuse.

17 BY JUROR MR. SERPAS: Thank you, sir.

18 (Juror Jason Serpas was excused.)

19 BY THE COURT: Yes, sir.

20 BY A JUROR: May I approach?

21 (Juror approached the bench.)

22 BY JUROR MR. THOMAS L. FRANKLIN: My question
23 is a little different. I feel it is my duty to
24 serve, and I want to serve. I own five businesses,
25 and I still want to serve. But my wife and I have
26 been together for over 20 years. My only question
27 is do I get conjugal visitations?

28 BY THE COURT: No. I can't. John Grisham
29 would let you, but I can't. No, sir. It would not

1 be, you would not be able to. You are not going to
2 have any contact with anybody but the other
3 jurors. All right.

4 (Juror Mr. Franklin leaves the bench.)

5 **BY THE COURT:** Yes, ma'am.

6 (Juror Anita Young approaches the bench.)

7 **BY THE COURT:** (To the attorneys) You might
8 as well stay up here.

9 BY JUROR ANITA YOUNG: Can I please go to my
10 dentist's office and then come back?

11 **BY THE COURT:** How long is that going to
12 take?

13 BY JUROR MS. YOUNG: At Courthouse Road and he
14 will see me, I am sure, if I walk in.

15 **BY THE COURT:** Well, how long do you think it
16 is going to take?

17 BY JUROR MS. YOUNG: An hour.

18 BY MR. LUMUMBA: What is that?

19 **BY THE COURT:** She has had a root canal, and
20 she needs some medication for it.

21 BY MR. LUMUMBA: Okay. How long do you
22 normally take?

23 **BY THE COURT:** To get the list together?

24 BY MR. LUMUMBA: Yeah.

25 **BY THE COURT:** She told me probably about 15
26 minutes or so.

27 BY MR. LUMUMBA: Oh. Can she go at lunch?

28 **BY THE COURT:** Yeah, can you go at lunch? Can
29 you make arrangements to go at lunch?

1 BY JUROR MS. YOUNG: He probably won't be
2 there.

3 BY THE COURT: I'm going to try to accommodate
4 you. Let me--

5 BY JUROR MS. YOUNG: --I will be back. I will
6 be back; okay.

7 BY THE COURT: I know you will be back, but I
8 have got to get started on some other stuff.
9 That's what I am trying to look at. Are you in
10 pain now?

11 BY JUROR MS. YOUNG: Uh-hum.

12 BY MR. EVANS: Do you think you are going to
13 be able to sit through the trial if there is a
14 trial?

15 BY JUROR MS. YOUNG: If it stops hurting. If
16 not, uh-uh.

17 BY MR. EVANS: If she is already in that much
18 pain, it worries me that she is going to be able to
19 stay anyway.

20 BY THE COURT: Well, we are going to see if
21 her dentist can fix her. I tell you what let's
22 do. How about if I break about 11:30?

23 BY JUROR MS. YOUNG: Oh, man. Can't I just go
24 and come back?

25 BY THE COURT: I tell you what let's do. I'm
26 going to let her go and then let her get this
27 tended to and come back and make a report to me.
28 If we have to, we will individually voir dire her.
29 How about that?

1 BY MR. EVANS: That will be fine.

2 BY JUROR MS. YOUNG: Thank you.

3 BY MR. LUMUMBA: What was her name?

4 BY THE CLERK: Anita Young.

5 (Juror Anita Young left the courtroom.)

6 BY THE COURT: Yes, sir.

7 BY THE CLERK: Judge, did you--

8 BY THE COURT: --She is coming back. She has
9 got to see a dentist about some pain medicine.

10 (A male juror approaches the bench.)

11 BY A JUROR: I have got a couple of reasons.
12 I have got a doctor's appointment that has been
13 scheduled for the past month at Keesler Medical
14 Center.

15 (Hands a document to the Court.)

16 It's a hernia, and it ain't getting any better.

17 BY THE COURT: When is it?

18 BY A JUROR: It's tomorrow morning at 9:30,
19 and Friday my car got totaled. So I am driving a
20 rental car, and it is twenty-four bucks a day, and
21 I have got to make permanent arrangements and see
22 people about getting something done that's
23 permanent, you know, get something more permanent
24 than what I've got for driving.

25 BY THE COURT: Okay.

26 BY A JUROR: That is my name; that is the
27 driver. I'm the owner, and the guy driving--

28 BY THE COURT: --What is your name?

29 BY A JUROR: Robert Ross.

1 **BY THE COURT:** I'm going to excuse Mr. Ross,
2 Robert Ross for medical reasons.

3 BY JUROR MR. ROSS: Thank you, sir.

4 (Juror Robert Ross was excused.)

5 **BY THE COURT:** Have they been sworn to answer
6 questions?

7 BY THE CLERK: Yes, sir, but not to try the
8 case.

9 **BY THE COURT:** Not to try the case, but they
10 have been sworn to answer questions?

11 BY THE CLERK: Yes, sir.

12 **BY THE COURT:** All right, what we are going to
13 have to do now is the Clerk is going to have to
14 make up a list of those of you who have qualified
15 for jury service. And we are going to get you
16 seated, and we are going to give you some numbers.
17 The numbers are for the purpose of me and the
18 attorneys being able to identify you because we are
19 going to do a voir dire examination in a minute,
20 and I'm going to tell you more about that when we
21 get to it. But it is where we ask some questions
22 of you in an effort to get a fair and impartial
23 jury in this case. And I need to make a record of
24 who answers what, and that's the reason you will
25 get numbers, and we will seat you in that order.
26 Now it will take us a little bit of time to do
27 that, but we are going to get started at it right
28 now.

29 Let me see the lawyers up here just a second.

1 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
2 THE JURY AS FOLLOWS:)

3 BY THE COURT: Here is the procedure that they
4 do down here. When they pull the venire, the
5 computer pulls it randomly, but it prints it out,
6 as you know, alphabetically. Their procedure down
7 here is then to take all of the cards from
8 everybody that is here, put them in a box, and
9 shuffle them up, and then pull them out randomly
10 which I think is appropriate because I think the
11 other way excludes folks with names with "W" and
12 "T." Any objection to that at all by either
13 side?

14 BY MR. LUMUMBA: No, sir.

15 BY MR. EVANS: No, sir.

16 BY THE COURT: Okay. That's what she is going
17 to do right now. All right.

18 BY THE CLERK: Okay, are you ready?

19 BY THE COURT: Uh-hum.

20 BY THE BAILIFF: Your Honor, this juror wants
21 to talk to you.

22 (Juror Mr. Eugene Crockett, Jr. approaches
23 the bench.)

24 BY JUROR MR. CROCKETT: I am the one that--

25 BY THE COURT: About the dog?

26 BY JUROR MR. CROCKETT: Yes. And the dog is
27 kind of large, you know, and everybody is afraid of
28 him. So I can't let nobody else feed him.

29 BY THE COURT: Isn't there somebody can feed

1 this dog? I need you to stay.

2 BY JUROR MR. CROCKETT: My wife might be able
3 to.

4 **BY THE COURT:** Okay.

5 (Juror leaves the bench. Another juror
6 approaches.

7 BY A JUROR: I have a question. Mine is not
8 hard, I promise.

9 **BY THE COURT:** All right.

10 BY A JUROR: Until Wednesday I am in care of a
11 smaller child who is 14 who is pretty much capable
12 of taking care of himself. He could live one night
13 alone if he had to. Would we would be allowed to
14 at least call him? My mother will be back
15 Wednesday. Will I be able to call him tomorrow at
16 all?

17 **BY THE COURT:** I can probably make
18 arrangements for that.

19 BY A JUROR: That's all I need to do. He is
20 14, but I'm going to make sure he gets up and goes
21 to school and make sure he makes it home.

22 **BY THE COURT:** I can make arrangements for
23 that.

24 BY A JUROR: I just wanted to make sure I
25 could do that. Thank you.

26 (Juror leaves the bench.)

27 **BY THE COURT:** Okay.

28 BY THE CLERK: As your name is called, please
29 come forward and have your juror information card

1 available, and the bailiffs will show you where to
2 have a seat. John Cuevas.

3 (THE CLERK HAD THE JURORS' NAMES ON SLIPS OF
4 PAPER IN A BOX WHICH SHE DREW OUT AND CALLED, AND
5 THE JURORS WERE THEN SEATED IN THAT ORDER AND GIVEN
6 A NUMBERED FAN NUMBERING 1 THROUGH 74. ANITA
7 YOUNG'S NAME WAS CALLED AS NUMBER 50, AND A PLACE
8 WAS SAVED FOR HER WHEN SHE RETURNED FROM THE
9 DENTIST. AT THE CONCLUSION OF THE CALL OF NAMES,
10 THERE WAS THE FOLLOWING:)

11 BY THE CLERK: Okay. Your Honor, the box is
12 exhausted.

13 **BY THE COURT:** Ladies and gentlemen, what we
14 have to do now, we have to now make a list of you
15 in the order that you have been called so that the
16 attorneys will have one, and I will have one and
17 the Court Reporter will have one. That will take a
18 few minutes for us to do. I'm going to give you a
19 break for about 15 or 20 minutes while that is
20 being done, and don't lose your number, but you
21 don't have to stay in your seats. You can take a
22 break until we come back and get started with the
23 voir dire examination in this case.

24 BY THE BAILIFF: One just came in to be
25 qualified.

26 **BY THE COURT:** All right. Bring him up here.
27 I have got one more who has not been qualified at
28 all, so I'm going to qualify him, and then we will
29 make him the last one if he qualifies.

1 BY MR. LUMUMBA: Okay.

2 BY THE COURT: If you will raise your right
3 hand, she is going to give you an oath.

4 (While the Clerk was swearing that juror to
5 answer questions, another juror who had been
6 through the qualification approached the bench and
7 addressed the Court as follows:)

8 BY A JUROR: I have a question. I have an
9 appointment at 11:30 to remove whatever is embedded
10 in my finger that has been there for two months.
11 Do I need to cancel?

12 BY THE COURT: Yeah, you do. I wish you
13 didn't but--

14 BY A JUROR: --and my finger may fall off and
15 then you will feel real bad.

16 BY THE COURT: I promise you I feel bad. I
17 will send you a card. What number are you?

18 BY JUROR MS. SHILSTONE: 42.

19 BY THE COURT: Well, you may not get picked
20 anyhow.

21 BY JUROR MS. SHILSTONE: That's true. And
22 maybe you will lunch at that time.

23 BY THE COURT: Right.

24 (New juror that was just sworn to answer the
25 questions approached the bench.)

26 BY THE COURT: All right, sir. In order to
27 serve on a jury in this state, there are certain
28 qualifications you have to meet. I'm going to go
29 over those with you and ask if any of those apply

1 to you. You have got to be 21. You have got to be
2 a registered voter in Harrison County. You have
3 got to be able to read and write, and you cannot
4 have been convicted of a felony. You cannot have
5 been convicted of the unlawful sale of intoxicating
6 liquors within the last five years. You can't be a
7 common gambler nor habitual drunkard. You must not
8 have served on a jury in this county within the
9 last two years and not have a case pending in this
10 court. This will be the only case. Any of that
11 apply to you?

12 BY A JUROR: No, sir.

13 BY THE COURT: Okay, you are not over 65
14 obviously. Do you work for the Department of
15 Corrections?

16 BY A JUROR: No.

17 BY THE COURT: Do you have a medical excuse
18 why you could not serve?

19 BY A JUROR: No.

20 BY THE COURT: Do you have anybody in your
21 family who is so ill that you have to take care of
22 them, and there is nobody else to take care of
23 them?

24 BY A JUROR: No.

25 BY THE COURT: Do you run your own business?

26 BY A JUROR: No.

27 BY THE COURT: Okay, you work for somebody
28 else. Is there any reason that you know you can't
29 serve?

1 BY A JUROR: No, sir.

2 BY THE COURT: All right. Mr. Collins, is
3 it?

4 BY A JUROR: Yes, sir.

5 BY THE COURT: All right, Mr. Collins is
6 qualified. Give him the last number.

7 (Juror Mr. William E. Collins was given number
8 75.)

9 (FOLLOWING A RECESS FOR THE LIST TO BE TYPED,
10 THE JURORS WERE BROUGHT BACK INTO THE COURTROOM,
11 AND WITH ALL COUNSEL PRESENT EXCEPT MR. FREELON AND
12 WITH THE DEFENDANT PRESENT, THERE WAS THE
13 FOLLOWING:)

14 BY THE COURT: Okay, ladies and gentlemen, we
15 have gotten the list made, and there is a matter
16 that I'm going to have to hear outside y'all's
17 presence. It'll take a little while. By the time
18 I do that, it is going to take us up to the lunch
19 break. I'm going to let you have a lunch break
20 from now until 1 o'clock and ask you to be back in
21 your seat at 1 o'clock, and we will start with the
22 voir dire at that time.

23 Now of course, y'all have heard nothing about
24 this case, and it would make it hard to talk about
25 it to begin with, but you can't talk about this
26 case at all. You cannot allow anybody to talk to
27 you about it, and I cannot allow anybody to talk
28 about it in your presence while you are on any
29 break. If you should run into any type of media

1 coverage in relation to this case, then you should
2 not listen to it and get to where you cannot hear
3 it or not read it or whatever.

4 Any other instructions from either lawyer?

5 BY MR. EVANS: None from the State, Your
6 Honor.

7 BY MR. LUMUMBA: No, sir.

8 BY THE COURT: Okay, I will see y'all at 1
9 o'clock.

10 (AS THE JURORS STARTED TO LEAVE THE ROOM,
11 JUROR NUMBER 29, JASON L. SMITH, APPROACHED THE
12 BENCH FOR THE FOLLOWING:)

13 BY THE COURT: Mr. Lumumba.

14 BY JUROR MR. JASON SMITH: Sir, I think I
15 already know a little bit about this case.

16 BY THE COURT: Okay.

17 BY JUROR MR. SMITH: I have got friends.

18 BY THE COURT: Okay, I'm going to ask-- that
19 will be part of the voir dire examination, and I
20 will ask you. Now when I ask you that question, I
21 do not want you to tell me what you know. You can
22 just acknowledge that you do know something about
23 it. Okay?

24 BY JUROR MR. SMITH: But you do want me to
25 come back?

26 BY THE COURT: Yes, sir. I will need you.

27 (Juror Jason Smith leaves the courtroom.)

28 BY MR. LUMUMBA: What did he say, Judge?

29 BY THE COURT: He said that he thought he knew

1 something about this case.

2 BY MR. LUMUMBA: Okay.

3 (A female juror approaches the bench.)

4 BY A JUROR: Hi. Your Honor, could you
5 clarify something for me?

6 BY THE COURT: Uh-hum.

7 BY A JUROR: I work in an office where I am
8 the only person, but it's not my business, and I am
9 not self-employed. My employer is from Atlanta. I
10 am a property manager, and if he needed to, he
11 could have another manager come in and take my
12 place. Does the law compel him to pay me because I
13 am not a salaried employee?

14 BY THE COURT: No, it does not. But for what
15 it is worth, you will be paid something while you
16 are here.

17 BY A JUROR: Okay, so that is not a good
18 reason to ask to be excused?

19 BY THE COURT: No, ma'am. Thank you.

20 (Female juror leaves the courtroom.)

21 BY THE COURT: No more jurors in the room, are
22 there?

23 BY THE BAILIFF: No, sir.

24 BY THE COURT: There is filed in this cause a
25 Motion to Quash the Jury Venire by the Defendant.
26 The Court will hear that at this time.

27 BY MR. LUMUMBA: Thank you. Judge, my motion
28 was brought after I had an opportunity to see some
29 of the questionnaires which were returned to us. I

1 haven't had the chance to do an updated count as to
2 what the venire was before we excluded -- we
3 excluded some of the people. People were excluded
4 based upon reasons that they had for hardships.
5 But prior to that exclusion, there were -- the
6 questionnaires that I had when I arrived here - and
7 I understand some of them have been given to me
8 since then - had about 154 names on it, 147 juror
9 questionnaires wherein the race was designated as
10 either white or black, Caucasian or Afro-American
11 or whatever designation the jurors chose to use,
12 and then there were several which, for between 147
13 and 154, there were some jurors who didn't put a
14 race in. And then there was an Oriental and I
15 think at least one Latino.

16 But in any event, using 147 as a figure to
17 work from, we come up with only about, less than 14
18 percent of the jurors are black. Harrison County,
19 according to census figures which I read and which
20 basically are published by the United States
21 Census, is approximately 21 percent black. So what
22 we have here is a disparity in numbers of over 6
23 percent in terms of at least the count we were able
24 to make at the time that we got, had the
25 questionnaires. We were given some other
26 questionnaires when we arrived. I don't think
27 those were substantially different than the ones
28 that we had already. I'm not sure there was any
29 blacks in them, but if there were, there were not a

1 great deal.

2 So my problem is with the disparity between
3 the population and the number of blacks on the
4 jury. And what the law requires - I think we have
5 presented this motion before in relationship to the
6 Lee County jury - is that there is some reason for
7 constitutional concern any time there is a
8 statistical disparity varying from the population
9 and the number of persons on the venire. So I
10 think that kind of concern exists here. And if I'm
11 not mistaken, although I don't have statistics to
12 back this up, I believe the Second or the First
13 District, which is where we are, of this county is
14 actually, has a heavier black population than the
15 other district which would lead me to believe that
16 the population should be heavier than 21 percent.
17 And I attempted from some lawyer friends I knew to
18 try to get some statistics to back that up.

19 And I think I even called the Clerk's office,
20 and I think they said that they don't keep race
21 with their jurors, so they don't know. But in any
22 event, if we just use 21 percent and realizing we
23 have to go up from there, then we have a problem.

24 So what I am raising here is that especially
25 in a case where we have a black defendant who is
26 accused of killing a white person who was killed at
27 the Tardy store, then I think that is a problem.
28 So that is why we would respectfully move to quash
29 this venire and to choose another one which would

1 be more representative of the population.

2 BY MR. HORAN: First, Judge, the
3 questionnaires that we have got now that are
4 relevant are the ones that are the 75 that are
5 presented to the Counsel for the Defendant. And if
6 the Court would -- I may be incorrect. I have 15
7 out of the 75 are black. Is that correct? Is that
8 what you have?

9 BY THE COURT: That is what I see.

10 BY MR. HORAN: That is 20 percent of the
11 panel, and that is certainly representative of the
12 population as a whole. And if you add two of Cuban
13 descent and one Oriental, that increases it above
14 the 20 percent. We have already addressed this
15 motion once before down here as well as in Tupelo,
16 and I think the law is clear as to what has to be
17 done. There is no allegation in the Motion that
18 the Clerk's Office pulled the jury improperly, that
19 it was not done according to the dictates of the
20 applicable Code Section. There is nothing in that
21 Motion that he has filed today that alleges that.
22 And therefore, the State requests that the Motion
23 be denied.

24 BY MR. LUMUMBA: I don't have anything else to
25 add to what we have already presented other than I
26 think that the Motion is, I would presume to be
27 based upon the statistics of persons initially
28 called to jury service, not based upon what occurs
29 after there has been disqualifications. That, of

1 course, has nothing to do with whether
2 statistically we have a proper jury as a result of
3 the selection process. And I think what the case
4 law says is that when there is a certain amount of
5 disparity between the statistics and the number in
6 the population-- I mean the statistics of the
7 population and the people that appear on the jury
8 of a particular race, and for that purposes we
9 don't add Cubans and Orientals to the blacks.
10 Blacks are a group in and of themselves, I think
11 recognized certainly under the Batson case and
12 whatever cases, and even before that under the
13 Swain case out of Alabama and various other cases
14 that talk about systematic discrimination.

15 So my concern is that when we came in here,
16 that was the numbers. I'm not necessarily agreeing
17 with counsel that that's what we have now. I
18 haven't had a chance to complete my list. I don't
19 know if you have, Judge. You said-- what did you
20 get?

21 **BY THE COURT:** There are 15 blacks on the, out
22 of the 75.

23 **BY MR. LUMUMBA:** Okay. But my concern would
24 be-- and I don't concede that nor do I deny that
25 because I haven't had a chance to complete it.

26 **BY THE COURT:** Well, I didn't come out and
27 count either, but that is my information. The
28 Court Reporter did, and that is my information that
29 she gave.

1 BY MR. LUMUMBA: Okay, very good. So that is
2 basically my presentation.

3 **BY THE COURT:** Okay. The Court finds that
4 this jury was drawn back in January. I forget
5 exactly the date. I believe it was the 5th of
6 January. At the time everybody was present,
7 lawyers for both sides and the Defendant. No
8 objection was made at that time as to how the jury
9 was selected. It was selected at random off the
10 computer. There were 350 names originally pulled
11 from the computer which contains the jury list, and
12 the Court about two weeks ago felt like that might
13 not be enough, so we issued an order for an
14 additional 40 jurors. Those were pulled in the
15 same manner from the computer. I do not know how
16 many of those were served or how many of those
17 showed up. They were at the bottom of the list
18 initially.

19 After the Court met today after the jurors
20 asked to be excused, we resulted with a panel of
21 75. Of that 75, fifteen are African-Americans.
22 That is 20 percent of the panel. Of that 15, the
23 Court notes that seven are within the first 28
24 names on the jury list. So they would be
25 representative not only to the panel as a whole,
26 but as to the order in which the Court intends to
27 draw this panel. So the Motion is overruled.

28 BY MR. HORAN: Your Honor, would you also
29 state for the record that there is listed two

1 Cubans and one Oriental for the purpose of the
2 record? Mr. Lumumba, in all of his motions, made
3 allegations that the victim-- and it is true that
4 the victim is white. So any non-whites would still
5 fall into the minority class.

6 **BY THE COURT:** I don't know that. If y'all
7 are willing to agree to that, then I can put that
8 in the record. If not, I will have to make that
9 determination when they come back and put it in the
10 record. I don't know. I did see one Oriental
11 gentleman. I know there is one, and I don't
12 remember what his name is.

13 **BY MR. HORAN:** That is Mr. Lackey, number 36.

14 **BY THE COURT:** Okay.

15 **BY MR. HORAN:** Mr. DiSalvo, I think he listed
16 on his questionnaire as of Cuban descent, and I
17 believe Mr. Cuevas did, even though I'm not sure
18 about that, on his questionnaire he represented
19 himself.

20 **BY THE COURT:** He would be number 1, but I
21 don't remember him.

22 **BY MR. LUMUMBA:** There is clearly an Oriental
23 in the group, and I know that at the time that I
24 looked through the questionnaires, I noticed the
25 person listed himself as Latino. I don't know if
26 that person is still with us or not, and there was
27 a person that listed himself as Cuban. Those are
28 the three that I can recall. I don't know if one
29 of those persons have not been excused. You know,

1 I would have to look back.

2 BY THE COURT: Okay. Well, I note the
3 Oriental gentleman is here.

4 BY MR. LUMUMBA: Yeah, he is here.

5 BY THE COURT: He is on it. The other two--

6 BY MR. LUMUMBA: I'm not sure.

7 BY THE COURT: You know, Cuevas would be a
8 Latin name.

9 BY MR. LUMUMBA: Right. Correct.

10 BY THE COURT: Whether he is or not, I don't
11 know.

12 BY MR. LUMUMBA: Well, yeah and then again--

13 BY THE COURT: --Wait a minute--

14 BY MR. LUMUMBA: --everybody who has Latin
15 names don't consider--

16 BY THE COURT: --I understand. We are not
17 going to get into that. I understand that.

18 BY MR. LUMUMBA: Okay, but let me-- Judge, I
19 have one other matter to bring to your attention.
20 We filed a long time ago -- we never got a decision
21 on it or an answer to it really. We had a Motion
22 for Discovery of Brady material. What we asked for
23 was any information, materials, reports, statements
24 and other matters which implicates or suggesting an
25 involvement of Marcus E. Gambell and Lasamuel
26 Gambell in the killings at Tardy store, on the ones
27 that occurred in this case that we are here about
28 on July the 16th, 1996. We saw information which--
29 well, actually, I think we read information

1 somewhere in the newspaper or something which would
2 suggest that these persons were suspects at one
3 time or that they were being investigated. And if
4 there is such information that exists which we have
5 not been given in discovery, we would ask that it
6 be presented. Now whether there is something else
7 that exists, I don't know.

8 **BY THE COURT:** I don't know either, and I have
9 entered an order for them to give you everything
10 that is discoverable, and I am assuming that they
11 have. It seems like at one hearing that they made
12 the statement at the hearing that they did not have
13 anything. I don't know whether that is true, but
14 you have got an order saying if it is discoverable,
15 they have got to give it to you.

16 **BY MR. EVANS:** Your Honor, for the record I
17 know of nothing other than what we have furnished.
18 In addition to having furnished all of the
19 discovery, some of it numerous times on this case,
20 since the last time we were down here in Gulfport
21 on the motion, Harvey Freelon, one of the attorneys
22 for the Defense, has gone to Greenwood. He has
23 gone through the entire files of the Highway Patrol
24 investigators to make sure there was nothing in
25 there that they didn't have. He has come to
26 Grenada. He has gone through our files. There is
27 nothing else. We have gone through this same
28 motion about fifteen times. And I just want to
29 make it clear that we have cooperated fully.

1 **BY THE COURT:** Well, my understanding was that
2 you had earlier said that you did not have that
3 information to furnish them. But once again, I say
4 there is an order there. If you do, you have got
5 to furnish it.

6 **BY MR. EVANS:** Okay.

7 **BY MR. LUMUMBA:** Did the Court want to
8 entertain the motions in the nature of limine at
9 this time or--

10 **BY THE COURT:** Let's go ahead and see if we
11 can get this jury picked, and then I can get them
12 situated, and then we will tend to that. How about
13 that?

14 **BY MR. HORAN:** We haven't been served any
15 motions, any additional in limine motions. Are
16 they going to be oral?

17 **BY MR. LUMUMBA:** They are going to be in oral
18 nature. They basically have to do with evidence
19 which was presented at the last trial. I think we
20 are all familiar with them. But the second thing
21 is, Judge, the other thing that we have not
22 resolved, and I just wanted to bring this to your
23 attention. Remember, if I read your orders right
24 which came in response to our most recent of
25 motions, is that we still have the question of the
26 motion of the Defendant's statement.

27 **BY THE COURT:** We do, and let me tell you how
28 I want to proceed on that. At the time - and I
29 will ask the State to do this. At the time that

1 you put on a witness or when you call the witness
2 that is going to testify to that.

3 BY MR. EVANS: Yes, sir.

4 **BY THE COURT:** If you will tell the Court
5 that, then I will excuse the jury, and we will hear
6 that Motion to Suppress outside the presence of the
7 jury.

8 BY MR. LUMUMBA: Okay.

9 **BY THE COURT:** Okay. I'm going to need y'all
10 to help me on that and you too because you will
11 know who it is too. All right?

12 BY MR. LUMUMBA: Right. Okay.

13 **BY THE COURT:** Okay, gentlemen, let's break
14 until 1 o'clock. All right?

15 BY MR. LUMUMBA: Okay, we will do that.

16 (FOLLOWING THE NOON RECESS ON MARCH 22, 1999,
17 PROCEEDINGS CONTINUED IN OPEN COURT WITH THE COURT,
18 ALL COUNSEL, THE DEFENDANT, AND THE JURY PANEL
19 INCLUDING MS. ANITA YOUNG ALL PRESENT FOR THE CASE
20 BEING CALLED AND THE VOIR DIRE AS FOLLOWS:)

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1 **BY THE COURT:** The Court calls cause number
2 B2401-98-00960, State of Mississippi versus Curtis
3 Giovanni Flowers. What says the State?

4 **BY MR. EVANS:** The State is ready for trial,
5 Your Honor.

6 **BY THE COURT:** What says the Defendant?

7 **BY MR. LUMUMBA:** We are prepared to proceed,
8 Judge.

9 **BY THE COURT:** All right. Ladies and
10 gentlemen.

11 (Pause while the Court confers with the
12 Clerk.)

13 **BY MR. LUMUMBA:** May we approach?

14 **BY THE COURT:** Uh-hum.

15 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
16 THE JURY AS FOLLOWS:)

17 **BY MR. LUMUMBA:** Okay, last time, you know, of
18 course, you know our motion for in camera
19 individual voir dire, you know, has already been
20 made. And I think your ruling on that was that you
21 would give anybody who heard about the case is
22 what, and then they would be individually voir
23 dired. That's what we had ruled on.

24 **BY THE COURT:** Yeah. That is pretty much it.
25 It depends on how many there are. Now there is one
26 gentleman, let me tell you, that has already
27 indicated that he knew something. I'm probably
28 just going to ask him if it would affect him. If
29 it will, then we won't have to do it on him.

1 BY MR. LUMUMBA: Okay.

2 BY THE COURT: Unless you want to. Because he
3 has indicated already--

4 BY MR. LUMUMBA: --No, if you are going to
5 exclude him, that is fine. Okay, but you know, and
6 that is one thing. Now I feel that you can get a
7 better voir dire on the death penalty stuff if we
8 do it individually on that alone. I mean I know
9 you have denied the motion to do everything
10 individually, but I really think you would get a
11 better voir dire and it would be a little more
12 friendly and stuff like that. So my motion in the
13 alternative to doing each of them individually on
14 everything is to do it individually on the death
15 penalty thing at least.

16 BY THE COURT: Well, let me see where we get
17 when we get to that point. Let me see what kind of
18 responses we get.

19 BY MR. LUMUMBA: Okay, all right.

20 END BENCH CONFERENCE

21 VOIR DIRE EXAMINATION BY THE COURT:

22 Ladies and gentlemen, what we are going to do now
23 is called the voir dire examination. That is going to be
24 where I ask you a bunch of questions. And when I get
25 through, each lawyer or a lawyer for each side will be able
26 to ask you some questions too. The questions will not, I
27 will not-- I won't nor will I allow the attorneys to
28 unnecessarily pry into your personal affairs nor to ask you
29 questions that would unnecessarily embarrass you in any way.

1 The sole and only purpose that we go through this procedure
2 is so that we can find a jury of twelve people that will be
3 fair and impartial to both sides in this case.

4 I want you to understand that there are no wrong
5 answers. You can't give me a wrong answer unless I ask you a
6 question that applies to you, and you do not answer it.
7 Other than that, I need to know how you feel. I need to know
8 about some relationships I'm going to ask you about, some
9 things that have happened to you in the past, and I need full
10 answers to those things. If you will do that, then you will
11 have done what I expect of you.

12 Now if during this procedure you can't hear me for
13 any reason and you need me to speak louder or something or
14 I'm not seeing you, raise up your hand. You make sure you
15 get hold of me. You make sure you let me know because I want
16 you to understand exactly what we are doing in this process.

17 The State of Mississippi in this case is
18 represented by Doug Evans of Grenada, Kevin Horan of Grenada,
19 and Walter Bleck of Grenada. The Defendant is represented by
20 Chokwe Lumumba from Jackson and is also represented by Harvey
21 Freelon, who is not here right now but will be here during
22 this trial. Are any of you related by blood or marriage to
23 any of the lawyers in this case? How many of you know any
24 of the lawyers in this case? (No response.)

25 I take it if you don't know them, then none of you
26 have ever been represented by any of the lawyers in this
27 case? (No response) Okay.

28 The Defendant in this case is Curtis Giovanni
29 Flowers. Mr. Flowers, if you would stand up. Thank you,

1 sir.

2 Are any of you related by blood or marriage to Mr.
3 Flowers? Now Mr. Flowers is from Winona, Mississippi, if
4 that will help you any. (No response.) Okay.

5 The next question I'm going to ask you is, concerns
6 your relation to people in law enforcement. Now this is a
7 very important question, and I want you to think about it.

8 BY MR. HORAN: Your Honor, we have got a
9 juror, I believe.

10 BY THE COURT: Okay. I'm sorry; I should have
11 inquired if everybody was here.

12 (Juror number 54 just walked in.)

13 BY THE COURT: What is your name, ma'am?

14 BY JUROR 54, DEBRA HODA: Debra Hoda.

15 BY THE COURT: Okay, let me ask you a couple
16 of questions. The State is represented by Doug Evans, Kevin
17 Horan, and Walter Bleck of Grenada, Mississippi. Do you know
18 any of them?

19 A. (By Ms. Hoda) No, sir.

20 Q. You have never been represented by them or been
21 anywhere where they are; is that right?

22 A. No, sir.

23 Q. Okay. And the Defendant is represented by Mr.
24 Lumumba, Chokwe Lumumba from Jackson, and Harvey Freelon from
25 Jackson. Do you know either of them?

26 A. No, sir.

27 Q. Okay. One other question that I need to ask you:
28 Have any of these lawyers ever been on a case on the other
29 side from you where they represented somebody on a case?

1 A. No, sir.

2 **BY THE COURT:** All right. I need to know how
3 many of you are now or have ever been in law enforcement?
4 Okay, let's start over here with number 7.

5 A. (BY JUROR 7, L. A. DiSALVO) Mr. DiSalvo, sir.

6 Q. DiSalvo, okay. Where were you in law enforcement?

7 A. Right here in Gulfport. I retired in 1992.

8 Q. Were you with the Sheriff's Department or the
9 Police Department?

10 A. Police Department.

11 Q. All right, and you retired when?

12 A. 1992.

13 Q. Okay.

14 A. Currently I'm working for the U.S. Marshal Service
15 in Biloxi at the federal courthouse.

16 Q. Are you a marshal?

17 A. Yes.

18 Q. Mr. DiSalvo, would the fact that you have been in
19 law enforcement or are now in law enforcement affect you in
20 this case at all and keep you from being a fair and impartial
21 juror?

22 A. Yes, sir. I believe so.

23 Q. All right. Thank you, Mr. DiSalvo. I appreciate
24 that.

25 Okay, number 14, Mr. Powell. Are you presently in
26 law enforcement?

27 A. (BY JUROR 14, STEPHEN E. POWELL) No, sir. In the
28 past.

29 Q. All right, how long ago was that, Mr. Powell?

1 A. 1992 is when I left.

2 Q. Where were you?

3 A. Lafayette Parish.

4 Q. Were you with the Sheriff's Department?

5 A. Yes, sir.

6 Q. Okay. Have you been in law enforcement since then?

7 A. I did about 6 months with the Long Beach Police
8 Department also.

9 Q. Okay, is anything about that fact, Mr. Powell, that
10 would affect you in this case at all and keep you from being
11 a fair and impartial juror?

12 A. Yes, sir. I believe it would.

13 Q. All right. Thank you, sir.

14 Yes, sir. Number 59, Mr.-- I'm sorry; Ms.
15 Trotter.

16 A. (BY JUROR 59, KARRIE L. TROTTER) I don't know if
17 this really counts, but when I was in college, I worked with
18 the Delta State University Police. I posted tickets and did
19 dispatch.

20 Q. Okay. How long ago was that, Ms. Trotter?

21 A. '95.

22 Q. Would that affect you in this case at all and keep
23 you from being a fair and impartial juror?

24 A. No, sir.

25 Q. You could set-- did you just write tickets, parking
26 tickets?

27 A. No. I posted the tickets and filed them.

28 Q. Oh, you worked in the office then?

29 A. Yeah.

1 Q. Okay, you were not a uniformed officer?

2 A. No.

3 Q. Okay. Thank you, ma'am.

4 Okay, number 58 is Ms. Barnes?

5 A. (BY JUROR 58, ROSE M. BARNES) Yes, sir.

6 Q. Okay, where-- who did you work for?

7 A. Gulfport PD.

8 Q. And how long ago was that?

9 A. That was back in '92.

10 Q. In '92. Have you worked with any law enforcement
11 since then?

12 A. No.

13 Q. Were you a uniformed officer?

14 A. No.

15 Q. You worked in the administration. Is that correct?

16 A. Special officer.

17 Q. I'm sorry?

18 A. Special officer.

19 Q. Okay. Would that affect you at all in this case
20 and keep you from being a fair and impartial juror?

21 A. No.

22 Q. Thank you, ma'am.

23 Number 62. Mr. Dedeaux; is that right?

24 A. (BY JUROR 62, JULIAN C. DEDEAUX) Yes. I worked at
25 the Adult Detention Facility back in '95 here in Harrison
26 County.

27 Q. Okay, more commonly known as the jail, I guess?

28 A. Yeah.

29 Q. All right. How long did you work there?

1 A. About a year.

2 Q. Have you worked in law enforcement since that time?

3 A. Currently I am a corporate investigator for
4 Imperial Palace Casino.

5 Q. You are an investigator for a casino?

6 A. Yes.

7 Q. So you are involved with security there, I guess;
8 is that right?

9 A. Yes, sir, in investigations ongoing.

10 Q. Okay. Is there anything about that, those
11 employment things that you have had that would affect you at
12 all in this case?

13 A. No, sir.

14 Q. You could set that aside and be a fair and
15 impartial juror?

16 A. Yes.

17 Q. Thank you.

18 Yes. Number 24. That is Ms. Bailey?

19 A. (BY JUROR 24, LORRIE J. BAILEY) Yeah, I used to be
20 a deputy for the Harrison County Jail and back in '92 for a
21 year.

22 Q. Okay. Would that affect you at all?

23 A. I believe so.

24 Q. Okay. You don't think you could set that aside and
25 be a fair and impartial juror?

26 A. No.

27 Q. Thank you, ma'am.

28 Number 22 is Ms. Andrews.

29 A. (BY JUROR 22, MS. ROSE M. ANDREWS) Yes.

1 Q. You obviously are in law enforcement? (NOTE:
2 Juror has on a uniform.)

3 A. Yes. I work for the Harrison County Detention
4 Center.

5 Q. You work at the jail too?

6 A. Yes.

7 Q. Okay. Would that affect you at all in this case
8 and keep you from being a fair and impartial juror?

9 A. Yes.

10 Q. Thank you, ma'am.

11 Number 47. Mr. Campassi?

12 A. (BY JUROR 47, MR. MICHAEL CAMPASSI) Yes, sir. I
13 started in '73 with the Coahoma County Sheriff's Department
14 in Clarksdale. When I graduated-- I was there for four
15 years, graduated from Delta State, and went with the State
16 Alcoholic Beverage Control in the enforcement division for
17 eight years. I was agent in charge here on the Gulf Coast.
18 I left there and went to Mississippi Power Company in
19 corporate security, stayed there ten years. I have always
20 held a Harrison County Sheriff commission.

21 Q. Would that affect you at all in this case?

22 A. I believe it would.

23 Q. All right, sir. You are 47; is that correct?

24 A. Yes, sir.

25 Q. Thank you.

26 Yes, ma'am. Number 64?

27 A. (BY JUROR 64, MS. WANDA G. MELVIN) I worked for 15
28 years for the Federal Probation and Parole Office in Biloxi.

29 Q. You worked for the Federal Parole Office?

1 A. Correct.

2 Q. Were you an officer or just--

3 A. No, data analyst.

4 Q. Okay. Would that affect you in this case at all
5 and keep you from being a fair and impartial juror?

6 A. No, sir.

7 Q. No? Ma'am? Is that what you said?

8 A. No, sir.

9 Q. Okay, thank you.

10 Anybody else? Now let me make sure I covered all
11 that. That was those of you who have been in law
12 enforcement. How many of y'all have had relatives in law
13 enforcement? Let's start over here with number 9. Number 9
14 -- well, before I do that, let me explain to you what I mean
15 by that. I tell this story over and over again so I
16 apologize to my people who have heard this before. But I
17 asked this question in Grenada, and I told them; I said this
18 means anybody's fifth cousin removed. If you have got
19 anybody you are related to, you need to tell me about it.
20 One lady held up her hand. She said, "My great great
21 granddaddy was Sheriff of Grenada County in 1860. Does that
22 count?" And it does even though she didn't know him. So
23 that's what I am looking for.

24 All right, number 9, Ms. O'Neal. Who have you got?

25 A. (BY JUROR 9, MS. REBECCA I. O'NEAL) I had a brother
26 who was a Gulfport police auxiliary officer, and I have a
27 cousin who is a Gulfport policeman.

28 Q. Okay. Would that fact affect you in this case at
29 all and keep you from being a fair and impartial juror?

1 A. No, I wouldn't think so.

2 Q. Okay, thank you, ma'am.

3 While I am over here, let's see who I have got on
4 this side. How about number 10 is Ms. Cook?

5 A. (BY JUROR 10, MS. KAREN J. COOK) Yeah. I had a
6 cousin used to be training for a Gulfport Police Department,
7 but he is no longer there. He is up in Maryland, and he is
8 in the fire department up there. And no, it wouldn't affect
9 me in my decision or anything.

10 Q. Thank you, Ms. Cook.

11 Number 11, Mr. Warden?

12 A. (BY JUROR 11, MR. WINSTON O. WARDEN) Yes, I had
13 two cousins, one on the Long Beach Police Department and one
14 on the Harrison County Sheriff's Office.

15 Q. Would that affect you at all in this case?

16 A. No.

17 Q. You could set that aside, Mr. Warden?

18 A. Yes.

19 Q. Okay.

20 Number 18, Ms. Weiss; is that right?

21 A. (BY JUROR 18, MS. RAYANNE M. WEISS) Yes, sir; it
22 is. I had an uncle who is now deceased in the 70's who was a
23 volunteer Sheriff's deputy in Franklin Parish, and I have an
24 uncle that is currently a volunteer Sheriff's deputy in
25 Franklin Parish, Louisiana, and it wouldn't affect me.

26 Q. Okay, thank you, ma'am.

27 Number 37 is Mr. Hall-- I'm sorry; Ms. Hall. I am
28 getting old, and I can't see that far. I apologize.

29 A. (BY JUROR 37, MS. GWYNNE F. HALL) My ex-husband was

1 Chief of Police in West Columbia, South Carolina. We have
2 been divorced 14 years, and it would not affect my decision.

3 Q. Thank you, ma'am.

4 Number-- let's go back to number 16. Mr. Dobson?

5 A. (BY JUROR 16, MR. DAVID JOEL DOBSON) Uncle is a
6 federal, works for a federal prison.

7 Q. He does work for a federal prison?

8 A. Yes, sir.

9 Q. He is correctional officer, I guess, for them; is
10 that right?

11 A. No, sir. He is in investigations.

12 Q. He is in investigations. Would that affect you at
13 all in this case?

14 A. No, sir.

15 Q. Thank you.

16 Number 57, Ms. Hilton?

17 A. (BY JUROR 57, MS. JENNIFER D. HILTON) My uncle is
18 deceased. He was a Mississippi State Highway Patrolman, but
19 that would not affect my decision.

20 Q. Thank you.

21 Let's go to number 1, Mr. Cuevas.

22 A. (BY JUROR 1, MR. JOHN W. CUEVAS) My dad was a Pass
23 Christian Police Department-- well, 15 years ago.

24 Q. Okay, would that affect you in this case?

25 A. No.

26 Q. Okay.

27 Number 4, Ms. Necaise?

28 A. (BY JUROR 4, MS. DIANE NECAISE) I had two cousins
29 on Pascagoula Police Force. They are no longer there.

1 Q. Okay.

2 A. And it wouldn't affect me.

3 Q. Ma'am?

4 A. It wouldn't affect me.

5 Q. Okay, it would not affect you at all?

6 A. No.

7 Q. Are you any kin to Albert Necaise who was the
8 District Attorney here?

9 A. He is my husband's cousin.

10 Q. Would the fact that he had been a District Attorney
11 here affect you in any way in this case?

12 A. No, sir.

13 Q. Okay.

14 Number 6, Ms. Ladner.

15 A. (BY JUROR 6, MS. BETTY E. LADNER) I have a nephew
16 that works in the Sheriff's Department in Harrison County.

17 Q. Would that affect you in this case at all?

18 A. No, sir.

19 Q. Thank you, ma'am.

20 Let's go to 25. That is Ms. Pell?

21 A. (BY JUROR 25, MS. EMMA J. PELL) My father was
22 Chief of Police of Long Beach. He is retired.

23 Q. Okay. Would that affect you in this case?

24 A. I don't believe so.

25 Q. Okay, I need for you to be a little bit more
26 definite than that. I need to know one way or another.

27 A. No. No.

28 Q. It would not? Okay.

29 Yes, sir. What is your number, sir?

1 A. (BY JUROR 28, MR. EUGENE CROCKETT, JR.) 28.

2 Q. Okay.

3 A. Presently, I got a son that is a sergeant detective
4 in Newark, New Jersey.

5 Q. Would that affect you in this case, Mr. Crockett?

6 A. No, sir.

7 Q. You could set that aside and be a fair and
8 impartial juror?

9 A. Yes, sir.

10 Q. Thank you, sir.

11 Number 48 is Ms. Connie Ladner.

12 A. (BY JUROR 48, MS. CONNIE L. LADNER) I don't know
13 if it would apply or not, but both of my daughters at one
14 time have been involved in Gulfport Police Explorer, and my
15 uncle over 25 years ago was an MP in the army. But no, that
16 would not affect my judgment.

17 Q. Okay, thank you, ma'am.

18 Number 53, Ms. Smith.

19 A. (BY JUROR 53, MS. DONNA M. SMITH) Yeah, my dad
20 worked for Harrison County Sheriff's Department back in the
21 70's, and I don't think that would affect my decision.

22 Q. Your daughter?

23 A. My dad.

24 Q. Your dad. In the 70's; is that correct?

25 A. Yes.

26 Q. And you don't think that would affect you at all?

27 A. No, sir.

28 Q. Okay, thank you, ma'am.

29 Number 65. Mr. Leonard?

1 A. (BY JUROR 65, MR. CASIMER J. LEONARD) Yes, sir. I
2 have a cousin--

3 Q. --Could you stand up, Mr. Leonard. My court
4 reporter probably can't hear you.

5 A. My cousin is a state trooper in Florida, Florida
6 state trooper, and it would affect my impartiality up here.

7 Q. I'm sorry; I couldn't hear you.

8 A. I said I think it will affect my judgment in being
9 a juror.

10 Q. You think it would?

11 A. Yes, sir.

12 Q. Okay. Thank you, Mr. Leonard.

13 A. You're welcome.

14 Q. Number 68. Mr. Bradley?

15 A. (BY JUROR 68, MR. JOHN W. BRADLEY) Yes, sir. Your
16 Honor, I have a son who is a Louisiana state trooper and also
17 served as a police officer for the New Orleans Police
18 Department and the Gulfport Police Department. I have a
19 brother who is an agent with the U.S. Customs Service, a
20 narcotics agent with them, and I do think that would affect
21 my judgment in this case.

22 Q. All right, Mr. Bradley. Thank you, sir.

23 Number 66, Mr. Webb?

24 A. (BY JUROR 66, MR. NATHAN O. WEBB) Yes, sir. I
25 have two cousins up there in Memphis and also Shelby County
26 Sheriff's Department that served honorably there.

27 Q. Would that affect you in this case at all?

28 A. Yes, sir.

29 Q. You think it would. All right, thank you, sir.

1 Let me go a little bit further, Mr. Webb. You think that
2 would keep you from being a fair and impartial juror in this
3 case is what you're telling me?

4 A. Yes, sir.

5 Q. Okay.

6 Number 51. Mr. Howe?

7 A. (BY JUROR 51, MR. DONALD E. HOWE) Yes. I was
8 raised up by an uncle who was in the Sheriff's Department,
9 and during that time I developed a pretty much of a distrust
10 for law enforcement.

11 Q. Well, you think that would affect you in this case?

12 A. I sure do.

13 Q. Okay.

14 BY MR. LUMUMBA: What number was that?

15 BY THE COURT: 51.

16 Q. Number 61. Ms. Walker?

17 A. (BY JUROR 61, MS. SYLVIA J. WALKER) I have an aunt
18 that works for the City of Gulfport, and I have a cousin that
19 works for the jail, Gary Moore.

20 Q. Would that affect you in this case at all?

21 A. No.

22 Q. Okay. Thank you, ma'am.

23 Anybody else? (No further response.)

24 The way a case gets to court is that a matter is
25 presented to a grand jury, which is made up generally of
26 twenty people, twelve of whom must vote for the indictment
27 for there to be an indictment. Generally, almost always at
28 the grand jury stage, the only side of a case that is
29 presented is the State's case, and the only thing that must

1 be decided by the grand jury is whether or not they think a
2 crime has been committed and whether or not they think there
3 is enough evidence for the case to come to trial. They do
4 not hear any defense testimony whatsoever, and they do not
5 decide the guilt or innocence of any person presented to
6 them. They are just the step that we go through in order to
7 get to this point in the matter.

8 Therefore, an indictment is nothing but a piece of
9 paper. There is absolutely no evidence of guilt or innocence
10 one way or another-- there is no evidence of guilt at all in
11 this case, and you must not consider it as evidence of
12 guilt. Is there anybody here that feels like just because
13 the Defendant was indicted, therefore he must be guilty of
14 something? (No response.) Okay.

15 In this case Mr. Flowers is charged with on the
16 16th day of July, 1996, in Montgomery County, Mississippi, of
17 killing and murdering one Derrick Stewart. Have any of you
18 ever heard of that case at all? (Juror number 68 stands
19 up.) Okay, that is number--

20 A. (BY JUROR 68, MR. JOHN W. BRADLEY) --Your Honor,
21 I'm not absolutely certain, but I think that my son--

22 Q. --Okay, you have already indicated to me -- Mr.
23 Bradley?

24 A. Yes.

25 Q. You have indicated you could not be fair and
26 impartial, so that is fine. Thank you though for the
27 response.

28 A. Yes, sir.

29 Q. And Ms. Weiss?

1 A. (BY JUROR 18, MS. RAYANNE M. WEISS) I'm not a
2 hundred percent sure.

3 Q. Now let me tell you where I am.

4 A. Okay.

5 Q. I don't want to know what you know.

6 A. Can I tell you what I do for a living, and that
7 will -- I'm a journalist, so I read the state wire. And I
8 may have read the case. I don't recall it offhand, but it
9 may come to me.

10 Q. Okay, that is fine. I will go into that in just a
11 minute. I'm not trying to cut you off but--

12 A. That's all I was going to tell you.

13 Q. I don't want everybody to know what you know, if
14 anything.

15 Number 29, Mr. Smith?

16 A. (BY JUROR 29, MR. JASON L. SMITH) Yes, sir.

17 Q. Mr. Smith, you had earlier indicated to me and the
18 other lawyers that you thought you knew something too.
19 Okay. Anybody else? Now this incident occurred in Winona
20 at Tardy Furniture Store. Does that bring back any memories
21 to any of you? Ms. Finch, isn't it?

22 Q. (BY JUROR 17, MS. TERESA M. FINCH) Yeah, I'm
23 sorry.

24 Q. Okay, Ms. Finch, thank you. I will come back to
25 that.

26 Okay, anybody else? Okay.

27 Let me ask you this. Other than those who have
28 just raised their hand, are any of you related by blood or
29 marriage to Derrick Stewart or know him or acquainted with

1 him or were? (No response).

2 The burden of proof in this case is on the State.
3 The Defendant is presumed innocent until such time as the
4 State proves his guilt beyond a reasonable doubt, and you are
5 required to presume that he is innocent until the State meets
6 that burden. Does anybody on the panel disagree with that
7 rule of law? Anybody think the burden ought to be something
8 else or that there ought to be another requirement?

9 One thing I'm telling you is the Defendant doesn't
10 have to prove anything. He is presumed innocent. Y'all
11 understand that? Is there anybody that does not understand
12 that? Okay.

13 Have any of you-- and I don't really want to know
14 the facts about this unless I ask specifically of them. I
15 want to know how many of you may have been victims of a
16 violent crime or really for any crime at all, any felony
17 crime - burglary or any kind of assault?

18 (Several hands go up.) Okay, let's start over here
19 with number 7, Mr. DiSalvo. You have already told me that
20 you could not be fair and impartial, so I--

21 A. (BY JUROR 7, MR. L. A. DiSALVO) I will just leave
22 it then.

23 Q. Number 17, Ms. Finch?

24 A. (BY JUROR 17, MS. TERESA M. FINCH) (Juror nods her
25 head.)

26 Q. What type of crime was it?

27 A. I was, I guess you would call it assaulted, and my
28 purse was stolen.

29 Q. Okay, how long ago--

1 A. I was probably-- let's see; I had a child with me.
2 He was born in '83. It was probably about eighty-- somewhere
3 like '84, I would think. He was at least a good year old.

4 Q. Okay. Is there anything about that fact that would
5 affect you in this case at all?

6 A. I don't think it would. I mean it's a shame when
7 someone does something like that to you, and it makes you
8 feel horrible.

9 Q. Yes, ma'am. But of course, that didn't have
10 anything to do with this case or this Defendant or anybody
11 else.

12 A. No.

13 Q. So would that affect you in your decision in this
14 case at all?

15 A. I don't believe so.

16 Q. Okay. I--

17 A. No, sir.

18 Q. Okay, thank you.

19 A. I got you.

20 Q. I hate to have to pin you down, but that is just
21 what I have to do.

22 Number 23, Ms. McClelland.

23 A. (BY JUROR 23, MS. LUCILLE W. MCCLELLAND)
24 Burglarized my house and home.

25 Q. How long ago was that, Ms. McClelland?

26 A. '95, '96, something like that.

27 Q. Okay, would that fact affect you in this case at
28 all and keep you from being a fair and impartial juror?

29 A. No, it wouldn't.

1 Q. Number 44, Mr. Cooper?

2 A. (BY JUROR 44, MR. DAVID COOPER) My car was
3 burglarized about in '85.

4 Q. Would that fact affect you in this case at all?

5 A. No.

6 Q. Thank you, sir.

7 Number 26, Ms. Lee?

8 A. (BY JUROR 26, MS. STEPHANIE B. LEE) Yes. I had my
9 car and my husband's car burglarized.

10 Q. Would that affect you at all in this case?

11 A. No, sir.

12 Q. Thank you.

13 Number 48, Ms. Ladner?

14 A. (BY JUROR 48, CONNIE L. LADNER) Victim of domestic
15 violence, and also I was robbed as a cashier in a convenience
16 store.

17 Q. And how long ago were those things, Ms. Ladner?

18 A. Two years ago on the domestic violence and 1987 on
19 the robbery.

20 Q. Would either one of those things affect you in this
21 case at all?

22 A. No, sir.

23 Q. Thank you, ma'am.

24 Number 54.

25 A. (BY JUROR 54, MS. DEBRA HODA) My house was
26 burglarized last year, but it would not affect my verdict.

27 Q. Okay, that is Ms. Hoda?

28 A. Yes, sir.

29 Q. Ms. Hoda, that would not affect you at all in this

1 case?

2 A. No, sir.

3 Q. Thank you, ma'am.

4 Number 51. Mr. Howe.

5 A. (BY JUROR 51, MR. DONALD E. HOWE) My business was
6 burglarized, and the case was never solved.

7 Q. Okay, you have already said that you could not be
8 fair and impartial; is that right, Mr. Howe?

9 A. Yes.

10 Q. Okay. Number 50, Ms. Young.

11 A. (BY JUROR 50, MS. ANITA YOUNG) Car was stolen and.

12 Q. (Pause) I'm sorry. I didn't know you were
13 through. Your car was stolen? How long ago was that?

14 A. '84. And a victim of domestic violence.

15 Q. All right. How long ago was that, ma'am?

16 A. '89.

17 Q. Would any of that affect you at all in this case
18 and keep you from being a fair and impartial juror?

19 A. (No audible response).

20 Q. Could you stand up, ma'am, so we can see you.
21 Would that affect you?

22 A. I can't be sure.

23 Q. Okay. Well, that is fair enough, and I might have
24 to answer that the same way. I need for you to stand up
25 because I have got a couple more questions for you. But in
26 this particular situation I need for you to tell me one way
27 or another. There is no wrong answer. I just need to know
28 how you feel.

29 A. Okay, if the person is a female, I would have a

1 problem.

2 Q. Okay.

3 A. Well, the person would be Derrick Stewart, and that
4 would be a male.

5 A. Okay, no problem.

6 Q. Yes, sir. Mr. Cuevas.

7 A. (BY JUROR 1, MR. JOHN W. CUEVAS) I had a four
8 wheeler and a motor bike stolen from my house.

9 Q. Okay. Mr. Cuevas, would that affect you in this
10 case?

11 A. I wouldn't think so.

12 Q. Okay, there again, I have got to get a definite
13 answer from you?

14 A. No.

15 Q. It would not; okay.

16 Number 73. Ms. Beeson.

17 A. (BY JUROR 73, MS. MARCIA W. BEESON) Yes. Our
18 house was broken into in '81. Everything was hauled off in a
19 van, but it has nothing to do with this case. I am fine.

20 Q. Would it affect you at all?

21 A. No, sir.

22 Q. Thank you.

23 Number 74, Mr. Gray.

24 A. (BY JUROR 74, MR. CHARLES A. GRAY) Our house was
25 burglarized in, I think, '93 or '92, and was held at gunpoint
26 twice.

27 Q. During that--

28 A. --different time periods. Held up in the first one
29 was in '93, I think. And the other one, the last one was in

1 '97.

2 Q. Would those incidents occur, would it affect you in
3 this case and keep--

4 A. --I believe so, yes.

5 Q. You think they would?

6 A. Yes, sir.

7 Q. All right. Give me your number again. Number 74?
8 Is that right?

9 A. Right.

10 Q. All right, thank you, Mr. Gray.

11 Anybody else? Number 15. That is Mr. Overstreet?

12 A. (BY JUROR 15, MR. JAMES M. OVERSTREET) I was held
13 up at gunpoint down in New Orleans a long, long time ago.
14 And I had a business here in Gulfport, and I was burglarized
15 I don't know how many times, and had probably, probably as
16 many as 15 cars stolen off the lot. But I put that aside.

17 Q. You don't think that would affect you?

18 A. It wouldn't affect me.

19 Q. Thank you, Mr. Overstreet.

20 Number 59 is Ms. Trotter.

21 A. (BY JUROR 59, MS. KARRIE L. TROTTER) My parents'
22 house was burglarized in '97 when I was visiting with them
23 for a while.

24 Q. Would that affect you in this case at all?

25 A. No.

26 Q. Thank you, Ms. Trotter.

27 There was another card over here. 43 is Ms.
28 Henson.

29 A. (BY JUROR 43, MS. NELENNE L. HENSON) Yes, sir. A

1 young woman under my care and myself were stopped out on the
2 beach in Long Beach about four years ago.

3 Q. Would that affect you in this case at all?

4 A. No, sir.

5 Q. Thank you.

6 Number 66? Mr. Webb?

7 A. (BY JUROR 66, MR. NATHAN O. WEBB) Yes, sir.

8 Q. Mr. Webb, you have already indicated you didn't
9 think you could be fair and impartial; is that right?

10 A. Yes, sir.

11 Q. Okay, thank you.

12 Now that gets, covers y'all. Now how many of you
13 other than-- well, how many of you have had family members
14 who have had those same problems? (More hands go up.) Okay,
15 let me start over, Mr. Cuevas.

16 A. (BY JUROR 1, MR. JOHN W. CUEVAS) About eight
17 months ago a young man went in my father-in-law's store and
18 robbed him, hit him in the back of the head, and told my
19 father-in-law he was going to kill him if he didn't open the
20 cash register. He stayed in the hospital for two weeks,
21 had--

22 Q. --Do you think that would affect you, Mr. Cuevas,
23 in this case?

24 A. Yes, it would.

25 Q. You think it would keep you from being a fair and
26 impartial juror?

27 A. Yes.

28 Q. Thank you.

29 Number 26 is Ms. Lee.

1 A. (BY JUROR 26, MS. STEPHANIE B. LEE) I have had a
2 couple of family members molested in my family, but I don't
3 believe that has anything to do with this case, and I can be
4 impartial.

5 Q. Okay, thank you, Ms. Lee.

6 All right, there was another one back there.
7 Number 44, Mr. Cooper.

8 A. (BY JUROR 44, MR. DAVID COOPER) My brother had a
9 car stolen, and my grandmother's house was broken into,
10 burglarized.

11 Q. Would that affect you in this case at all?

12 A. No.

13 Q. Thank you.

14 Number 45, Ms. Anderson.

15 A. (BY JUROR 45, MS. PHYLLIS D. ANDERSON) Yes. My
16 sister's children, two of her children were hit by a drunk
17 driver, DUI. One of them was killed. But that doesn't
18 really seem like it is what, you know, to this type of case,
19 but if it was that type of a case, I would have a problem
20 with it.

21 Q. Okay. This won't be that type of case. Would this
22 affect you at all in this case?

23 A. I don't think so.

24 Q. Okay, thank you.

25 Number 73, Ms. Beeson?

26 A. (BY JUROR 73, MS. MARCIA W. BEESON) Yes. My son's
27 house was burglarized in Hattiesburg this past year. I don't
28 think-- it would not bother me in this case.

29 Q. Thank you, ma'am.

1 And number 71, Ms. Pickich?

2 A. (BY JUROR 71, MS. LAURA M. PICKICH) Yes. My
3 sister's car was robbed at gunpoint, but I don't think-- it
4 will not have any effect.

5 Q. Thank you, ma'am.

6 Number 32 is Mr. Davis?

7 A. (BY JUROR 32, MR. CURTIS H. DAVIS) My wife before
8 we were married was assaulted.

9 Q. Would that affect you in this case at all?

10 A. No, sir.

11 Q. Thank you, sir.

12 Number 37 is Ms. Hall.

13 A. (BY JUROR 37, MS. GWYNNE F. HALL) My [REDACTED] was
14 beaten and raped in '91, but it would not have any effect on
15 this case.

16 Q. Thank you.

17 Number 57, Ms. Hilton.

18 A. (BY JUROR 57, MS. JENNIFER D. HILTON) My [REDACTED]
19 was beaten and raped, but it would not affect my decision in
20 this case.

21 Q. Okay.

22 And number 61, Ms. Walker.

23 A. (BY JUROR 61, MS. SYLVIA J. WALKER) My father's
24 home was burglarized and someone jumped on him, but they
25 didn't catch him.

26 Q. Would that affect you in this case, Ms. Walker?

27 A. No, sir.

28 Q. I couldn't hear you, ma'am?

29 A. No.

1 Q. Thank you.

2 Number 50, Ms. Young.

3 A. (BY JUROR 50, MS. ANITA YOUNG) My uncle was
4 murdered in--

5 Q. --Would you stand up, Ms. Young. I can't hear
6 you.

7 A. My uncle was murdered in the 70's.

8 Q. Would that affect you in this case at all?

9 A. No.

10 Q. Would it keep you from being a fair and impartial
11 juror?

12 A. No.

13 Q. Thank you.

14 Number 69. Mr. Hamilton?

15 A. (BY JUROR 69, MR. RHETT D. HAMITER) Hamiter.

16 Q. Hamiter. Okay.

17 A. My family home was burglarized back in the 80's
18 several times.

19 Q. Would that affect you in this case at all?

20 A. No, sir. I don't think so.

21 Q. All right. Well, I will ask you to be definite if
22 you can.

23 A. No, sir.

24 Q. Okay, thank you.

25 All right. Now how many of you-- I'm sorry.

26 Number 48. Ms. Ladner.

27 A. (BY JUROR 48, MS. CONNIE L. LADNER) My [REDACTED]
28 was raped and molested in '87. That would not affect my
29 judgment.

1 Q. Okay. Thank you, ma'am.

2 I may have already said this, but let me say it
3 again if I didn't. If we get on down through these questions
4 and all of a sudden it dawns on you that some of these things
5 we have already asked relate to you, if you will let me know,
6 and we will go back and talk about it a little bit.

7 How many of you ever served on a jury? (Many hands
8 go up.) Okay, let's start over here with number 9, Ms.
9 O'Neal. Ms. O'Neal, was it a--

10 A. (BY JUROR 9, MS. REBECCA I. O'NEAL) --drug
11 trafficking.

12 Q. It was a criminal case then?

13 A. Uh-hum.

14 Q. Okay. Did y'all reach a verdict?

15 A. No, we never saw it. He came out and looked at the
16 jury and then they did a plea, and we left.

17 Q. Okay, so you never have gotten to the point where
18 y'all deliberated? Is that right?

19 A. No.

20 Q. Okay. Would that fact that you had served on that
21 jury affect you in this case at all?

22 A. No.

23 Q. Okay.

24 Number 15, Ms. Overstreet?

25 A. (BY JUROR 15, MR. JAMES M. OVERSTREET) Yes, sir.
26 I was on a federal jury in a criminal case.

27 Q. Federal jury, did you say?

28 A. Yes, sir.

29 Q. Did that go to completion?

1 A. Yes, sir.

2 Q. All right, and how did it come out?

3 A. Guilty.

4 Q. All right, sir. Thank you. How long ago was that,
5 Mr. Overstreet?

6 A. 6 or 7 years probably.

7 Q. And what type of case was it?

8 A. Drug dealer.

9 Q. Okay. Would that affect you at all in this case?

10 A. No.

11 Q. Thank you, sir.

12 All right. Let's stay on this side right now.

13 Number 42 is Ms., is it Shilstone?

14 A. (BY JUROR 42, MS. DENISE SHILSTONE) Shilstone. I
15 have been on four juries.

16 Q. Four?

17 A. Yes.

18 Q. You are a veteran.

19 A. I know. And would it affect my decision? Probably
20 not. They keep asking me back.

21 (Laughter).

22 Q. I hear that. Were they all criminal cases?

23 A. No. One was eminent domain.

24 Q. All right.

25 A. One was fraud. One was a child abuse case, and one
26 was a murder.

27 Q. Okay, I'm not too worried about the eminent domain,
28 but on the criminal cases did all of those go to the point
29 where the jury made a decision?

1 A. Yes.

2 Q. Okay, and what was the outcome of those three?

3 A. On one I was just an alternate.

4 Q. So you did not deliberate?

5 A. I didn't sit on the decision making, but on the
6 other two the verdict was guilty.

7 Q. Okay. Thank you, ma'am.

8 All right, number 64. Ms. Melvin?

9 A. (BY JUROR 64, MS. WANDA G. MELVIN) I have served
10 on two grand juries.

11 Q. Two grand juries?

12 A. Yes, sir.

13 Q. Okay, you have never served on a jury where the
14 case has been decided?

15 A. No.

16 Q. Is that correct?

17 A. Right. Correct.

18 Q. Let me go back to Ms. Shilstone. Would that
19 experience on those juries affect you in this case at all?

20 A. (BY JUROR 42, MS. DENISE SHILSTONE) No, sir. It
21 would not.

22 Q. Do you think you could decide this case based on
23 the-- as you know having been there, you have got to decide
24 it on the evidence from the witness stand--

25 A. Absolutely.

26 Q. And the instructions that I give you.

27 A. Yes.

28 Q. Could you do that?

29 A. Yes, sir.

1 Q. Thank you, ma'am.

2 And Ms. Melvin?

3 A. (BY JUROR 64, MS. WANDA G. MELVIN) Yes, sir.

4 Q. Would the fact that you have been on a grand jury
5 affect you at all in this case?

6 A. No, sir.

7 Q. Okay.

8 And number 41. Ms. Kreeger?

9 A. (BY JUROR 41, MS. CHARLENE S. KREEGER) Yes, sir.

10 Q. All right.

11 A. I was an alternate on a federal jury in Biloxi
12 probably about ten years ago. It was a drug case, but I was
13 the alternate.

14 Q. Okay, you did not end up deliberating?

15 A. No.

16 Q. Would that experience affect you in this case at
17 all?

18 A. No, sir.

19 Q. Okay.

20 Number 56. Mr.-- Ms. Blakely?

21 A. (BY JUROR 56, MS. CATHERINE BLAKELY) Yes, sir. I
22 just served on a petit jury about ten years ago.

23 Q. Was it here?

24 A. Yes.

25 Q. Okay. What kind of case was it, Ms. Blakely?

26 A. Uh, he had fallen. Someone had gotten hurt on
27 somebody else's property.

28 Q. So it was a civil case, and they were suing for
29 money; is that right?

1 A. Yes.

2 Q. Okay. Did you do the deliberations and return a
3 verdict on that?

4 A. Yes, we did.

5 Q. Okay. Is there anything about that case that would
6 affect you at all in this case?

7 A. No.

8 Q. Okay. Thank you, ma'am.

9 Number 20, Ms. Ballman.

10 A. (BY JUROR 20, MS. CINDY S. BALLMAN) I served on a
11 rape case in Stone County. We did reach a verdict, and it
12 was not guilty. And no, it would have nothing to do with my
13 decision here.

14 Q. It would not have anything to do with it?

15 A. No.

16 Q. How long ago was that?

17 A. About 15 years ago.

18 Q. Thank you, ma'am.

19 Number 46, Mr. Taylor.

20 A. (BY JUROR 46, MR. PERRY J. TAYLOR) Yes, sir. I
21 served on a jury, and no, this case would not have anything
22 to do with it.

23 Q. Okay, where was that that you served?

24 A. Here.

25 Q. What kind of case was it?

26 A. It was a drug case.

27 Q. And that would not affect you at all?

28 A. No, sir.

29 Q. What kind of verdict was there in that case?

1 A. Guilty.

2 Q. Thank you, sir.

3 Number 22.

4 A. (BY JUROR 22, MS. ROSE M. ANDREWS) I served on two
5 murder trials. The verdict was guilty.

6 Q. Okay, Ms. Andrews. Thank you.

7 Number, well, let's go to 54.

8 A. (BY JUROR 54, MS. DEBRA HODA) I served on a civil
9 case four years ago.

10 Q. A civil case?

11 A. Uh-huh.

12 Q. Did you reach a verdict in this case?

13 A. Yes.

14 Q. Was there anything about that case that would
15 affect you at all in this case or your jury service affect
16 you?

17 A. No.

18 Q. Okay. Mr. Crockett?

19 A. (BY JUROR 28, MR. EUGENE CROCKETT, JR.) I served
20 on two juries. One was a criminal, but they dismissed the
21 jury because he, you know, he confessed.

22 Q. He ended up pleading guilty?

23 A. Pleading guilty.

24 Q. Okay. So y'all didn't ever have to reach a
25 determination on that; is that right?

26 A. No, sir.

27 Q. The other one was a civil case?

28 A. Civil case.

29 Q. How long ago were these cases, Mr. Crockett?

1 A. Oh, about fifteen-- the civil case was about
2 fifteen years ago.

3 Q. How long ago was the criminal case?

4 A. Oh, about twelve years.

5 Q. Would that affect you, either of those experiences
6 affect you at all in this case and keep you from being a fair
7 and impartial juror?

8 A. Absolutely not.

9 Q. Thank you, sir.

10 Number 70, Ms. Shook?

11 A. (BY JUROR 70, MS. WILLIE M. SHOOK) I served on a
12 eminent domain case about five years ago.

13 Q. Okay, which, of course, would be a civil case. Did
14 you reach a verdict in that case?

15 A. Uh-hum.

16 Q. Is there anything about that fact that would affect
17 you at all in this case and keep you from being a fair and
18 impartial juror?

19 A. No, sir.

20 Q. Thank you.

21 Number 72, Ms. Abernathy?

22 A. (BY JUROR 72, MS. BARBARA ABERNATHY) Yes, sir.
23 Two cases. One was a drug case, and it was guilty. And the
24 other one was a murder, and it was guilty.

25 Q. And how long ago was that, Ms. Abernathy?

26 A. Four years for the drug case and '77 for the
27 murder.

28 Q. Would anything about that affect you?

29 A. No, sir.

1 Q. In this case at all?

2 A. No, sir.

3 Q. I'm sorry; I missed a hand. Number 36, Mr. Lackey?

4 A. (BY JUROR 36, MR. JOHNNY F. LACKEY, II) About six
5 or seven years ago I served on a civil case with insurance
6 fraud with attempted arson and found guilty, and it wouldn't
7 have any bearing on this case.

8 Q. It would not affect you at all; is that right? Is
9 that what you said, Mr. Ladner?

10 A. No.

11 Q. Okay, thank you, sir.

12 Number 69. Mr. Hamiter.

13 A. (BY JUROR 69, MR. RHETT D. HAMITER) Yes. I served
14 on a criminal jury about ten years ago.

15 Q. Did you reach a verdict in that case?

16 A. Yes, sir. It was not guilty.

17 Q. What kind of case was it?

18 A. A drug case.

19 Q. Okay. Would that experience affect you at all in
20 this case and keep you from being a fair and impartial juror?

21 A. No, sir.

22 Q. Okay.

23 (Mr. Freelon enters the courtroom for the
24 first time on this date.)

25 BY THE COURT: Now I'm going to get to
26 introduce Mr. Freelon. This is Mr. Harvey Freelon. He is
27 one of the Defense Counsel. So let me go back to that
28 question. Any of you related by blood or marriage to Mr.
29 Freelon now that you can see him? Any of you ever been

1 represented by him or know him in any way? (No response.)

2 Now this is another one of those questions where I
3 don't need to know any details, but I need to know the answer
4 to the question as I ask it. Have any of you ever been
5 charged with a felony? And I know that-- like I say, I don't
6 want to know any facts. I just need to know if you have ever
7 been charged.

8 All right, number 39, Mr. Franklin?

9 A. (BY JUROR 39, MR. THOMAS L. FRANKLIN) Yes.

10 Q. How long ago was that, Mr. Franklin?

11 A. 1989.

12 Q. Okay, has that matter -- I assume it's over and
13 done with?

14 A. Yes, sir.

15 Q. Okay. Did it go any further than you just being
16 charged?

17 A. We went to trial.

18 Q. Okay. Well, what was the result of the trial?

19 A. Not guilty.

20 Q. Okay. Would that experience affect you at all in
21 this case and keep you from being a fair and impartial juror?

22 A. Not at all.

23 Q. Okay. Anybody else?

24 Number 10. Ms. Cook.

25 A. (BY JUROR 10, MS. KAREN J. COOK) Back in '81 I was
26 charged with drug offense. There was more to it, but it was
27 dropped because it was, what you call it? Caffeine
28 substance.

29 Q. Okay. It turned out not to be a controlled

1 substance?

2 A. Right. It was all dropped.

3 Q. So it never got to trial; is that right?

4 A. No. Right.

5 Q. Is there anything about that fact or that
6 experience that would affect you at all in this case--

7 A. No, sir.

8 Q. --and keep you from being a fair and impartial
9 juror?

10 A. No, sir.

11 Q. All right, anybody else?

12 Okay, have any of you had any members of your
13 family who have been charged with a felony? (Several hands go
14 up.)

15 Okay, number 16, Mr. Dobson. What was the
16 relationship?

17 A. (BY JUROR 16, MR. DAVID JOEL DOBSON) My cousin.

18 Q. How close?

19 A. First cousin.

20 Q. What was the nature of the charge?

21 A. Murder.

22 Q. How long ago was that?

23 A. '92. Around '92.

24 Q. That matter is completed by now, I assume; is that
25 right?

26 A. Sir?

27 Q. It's over with, isn't it?

28 A. Yes, sir.

29 Q. Is there anything about that fact that would affect

1 you in this case at all, keep you from being a fair and
2 impartial juror?

3 A. No, sir.

4 Q. Thank you.

5 All right, let's go back to Ms. Cook.

6 A. (BY JUROR 10, MS. KAREN J. COOK) My son when he
7 turned 18, he committed a robbery back in California, and he
8 was sentenced for a year. I don't know all the details to
9 it. I don't even know what he told me. So it wouldn't
10 affect any, you know, decision--

11 Q. --The fact that that happened would not affect you?

12 A. No. No, sir.

13 Q. Thank you, ma'am.

14 Number 31. Mr. Maynard?

15 A. (BY JUROR 31, MR. ROBERT A. MAYNARD) My brother
16 was charged with drug possession and I believe felony DUI
17 back in the late 80's.

18 Q. Okay. Those matters are complete, I assume, by
19 now?

20 A. Yes.

21 Q. Would that experience or that fact affect you in
22 this case at all?

23 A. No.

24 Q. Thank you.

25 If you would hold the fan up just a little bit
26 further. Okay, number 41, Ms. Kreeger.

27 A. (BY JUROR 41, MS. CHARLENE S. KREEGER) I have a
28 nephew that was convicted of manslaughter. He has served his
29 time, been paroled, and is doing fine.

1 Q. Would that affect you in this case?

2 A. No, sir.

3 Q. Okay. Number 56. Ms. Blakely.

4 A. (BY JUROR 56, MS. CATHERINE BLAKELY) I have a son
5 that was charged with a felony.

6 Q. How long ago was that, Ms. Blakely?

7 A. It was this year.

8 Q. Okay, is it still pending?

9 A. No.

10 Q. That case still pending?

11 A. No.

12 Q. All right. Is there anything about that experience
13 that would affect you in this case at all?

14 A. No.

15 Q. Okay. Thank you, Ms. Blakely.

16 Number 58. Ms. Barnes?

17 A. (BY JUROR 58, MS. ROSE M. BARNES) Yes, sir. I had
18 - how shall I say? - I have two brothers that both went to
19 the penitentiary.

20 Q. I'm sorry; I did not hear you.

21 A. They both went to the penitentiary.

22 Q. Okay. How long ago was that, Ms. Barnes?

23 A. Actually, I was very young on one of them, and I
24 was in college for the other one.

25 Q. Would that fact affect you at all in this case?

26 A. No, sir.

27 Q. It would not keep you from-- you could still be a
28 fair and impartial juror?

29 A. Yes, sir.

1 Q. Is that right? Thank you.

2 Were there any more on this side? Yeah, 61 is Ms.
3 Walker.

4 A. (BY JUROR 61, MS. SYLVIA J. WALKER) I have a
5 brother that had a DUI ticket.

6 Q. A DUI ticket?

7 A. I mean had DUI.

8 Q. Would that affect you at all in this case?

9 A. No.

10 Q. Okay. Thank you, ma'am.

11 Number 12.

12 A. (BY JUROR 12, MS. SHERRY D. LOTT) I have two
13 brothers that were charged with felony before.

14 Q. Ms. Lott, how long ago was that?

15 A. One was like four years and one was like seven
16 years.

17 Q. Okay. Would that affect you at all in this case?

18 A. No.

19 Q. Okay. Thank you.

20 Number 18, Ms. Weiss.

21 A. (BY JUROR 18, MS. RAYANNE M. WEISS) I have a
22 cousin who is very distant in the last three or four years
23 that killed someone while intoxicated in New Orleans and
24 served his sentence.

25 Q. Would that affect you at all in this case?

26 A. No.

27 Q. Thank you, ma'am.

28 Number 60. Mr. Seymour.

29 A. (BY JUROR 60, MR. DONALD G. SEYMOUR) Just family

1 members, different members, you know, served sentences. It
2 wouldn't affect me.

3 Q. Thank you, Mr. Seymour.

4 Number 26, Ms. Lee.

5 A. (BY JUROR 26, MS. STEPHANIE B. LEE) I actually have
6 three instances. I have a great uncle who hired someone to
7 kill his wife in probably the late 70's or early 80's. He
8 has been paroled since. I have another great uncle who was
9 charged with food stamp fraud, and he died a year ago. Then
10 I have a second cousin who is in line for multiple robberies.

11 Q. Would any of that affect you in this case?

12 A. No, sir.

13 Q. You think you could set that aside and be a fair
14 and impartial juror?

15 A. Yes, sir.

16 Q. Thank you.

17 Number 23, Ms. McClelland.

18 A. (BY JUROR 23, MS. LUCILLE W. MCCLELLAND) I have a
19 brother and a nephew both charged with felonies. My brother
20 was put on probation, and my nephew has been in and out of
21 prison.

22 Q. Would that affect you at all in this case?

23 A. No.

24 Q. Thank you, ma'am.

25 Number 28; is that right?

26 A. (BY JUROR 28, MR. EUGENE CROCKETT, JR.) Yes, sir.

27 Q. Yeah, Mr. Crockett. Sorry, Mr. Crockett; I
28 couldn't see you.

29 A. I have a stepson that is serving time in Eastwood

1 for burglary right now.

2 Q. Would that affect you at all in this case?

3 A. No, sir.

4 Q. Thank you.

5 Number 53.

6 A. (BY JUROR 53, MS. DONNA M. SMITH) I have an uncle
7 who is serving time for capital rape.

8 Q. How long ago did that happen, Ms. Smith?

9 A. '95.

10 Q. Would that affect you in this case at all?

11 A. No, sir.

12 Q. Thank you.

13 Number 48.

14 A. (BY JUROR 48, MS. CONNIE L. LADNER) I have an
15 ex-husband who was charged with rape, sodomy, and molestation
16 of [REDACTED] in '87. And no, that would not affect me in
17 this case.

18 Q. Thank you, ma'am.

19 Number 70, Ms. Shook.

20 A. (BY JUROR 70, MS. WILLIE M. SHOOK) I have a nephew
21 who was charged with a felony.

22 Q. Who is charged? That is going on now?

23 A. No, he was charged.

24 Q. Okay. How long ago was that, Ms. Shook?

25 A. About 5 years ago.

26 Q. Would that affect you in this case at all?

27 A. No.

28 Q. Okay. Number 54?

29 A. (BY JUROR 54, MS. DEBRA HODA) I have a brother

1 that was charged with a felony, but it has been over 20 years
2 ago.

3 Q. Would that affect you, Ms. Hoda?

4 A. No.

5 Q. Thank you.

6 Anybody else? Number 73.

7 A. (BY JUROR 73, MS. MARCIA W. BEESON) I just
8 remembered something.

9 Q. All right. That is good.

10 A. In the early 70's my husband's cousins were robbed
11 and murdered in Long Beach, and the guys who did it were
12 arrested and are in jail at this time. But that would not
13 affect me in any way in this case.

14 Q. Thank you, ma'am.

15 Now let me see. Ms. Green, did you hold up yours?

16 A. (BY JUROR 2, MS. EVA M. GREEN) Yes. I have a
17 nephew charged with arson.

18 Q. Has been or is now?

19 A. Has been.

20 Q. Okay. Is there anything about that fact that would
21 affect you at all in this case and keep you from being a fair
22 and impartial juror?

23 A. No, it wouldn't.

24 **BY THE COURT:** Okay. At the end of the case,
25 I'm going to instruct you on what the law is. Now the way
26 this works is I get to decide what the law is in this case,
27 and it's the law whether you agree with it, whether you think
28 it ought to be the law or whatever. You are required by your
29 oath to follow my instructions on the law. Now that is half

1 of it. The other half is you get to decide the facts. All
2 you have to do is listen to the facts and decide them from
3 the witness stand, decide this case on the evidence that you
4 hear from the witness stand, and apply my law to those facts,
5 and then make your decision. Now will everybody do that?
6 Is there anybody here that feels they will not follow my
7 instructions on the law or will consider things other than
8 what comes from the witness stand?

9 Okay. There are certain people who have religious
10 or philosophical beliefs that prevent them from passing
11 judgment on another human being regardless, they just can't
12 do that. And there is absolutely nothing wrong with that.
13 That is-- I get affirmative responses to that all the time.
14 However, it is our purpose here in this trial to reach some
15 decision, and if you can't make up, if you can't make a
16 decision before you go in there, obviously, you can't do what
17 we are here to do. So I need to know if anybody has such a
18 religious or philosophical belief? Okay.

19 Gentlemen, let me see y'all up here just a second.

20 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
21 THE JURY AS FOLLOWS:)

22 **BY THE COURT:** Let me tell you what I'm going
23 to do now. I am about down, we are just about down
24 to the death part of it. I have got these three
25 ladies, these three people that said they knew
26 something about it. I am thinking about giving
27 them a break, and let's individual them. And then
28 we will bring the jury back and go from there.
29 Okay?

1 (Counsel nod their heads.)

2 END BENCH CONFERENCE.

3 **BY THE COURT:** What we are going to do, ladies
4 and gentlemen, right now I am going to give y'all
5 about a 15 minute break. During that time I have
6 got three of you I have got to talk to a little bit
7 more in relation to some of the responses. Nobody
8 has done anything wrong. I just, these people that
9 think they might know something about this case, I
10 have to do that individually. So I'm going to give
11 you a break while I do that, and then we will come
12 back, and we will continue on.

13 Y'all should not discuss this matter amongst
14 yourselves. You should not let anybody discuss it
15 with you. If anybody tries to discuss it with you
16 or in your presence, you are to let me know when
17 you come back in here. Okay. I will see you back
18 in about 15 minutes.

19 (Most prospective jurors leave the courtroom.)

20 **BY THE COURT:** Even if you don't want a break,
21 I have got to ask you to step outside while I do
22 this.

23 (All jurors leave the courtroom.)

24 **BY THE COURT:** Let's start with Ms. Finch.

25 (Bailiff left the courtroom with a list of the
26 three jurors to be questioned and then returned.)

27 **BY THE BAILIFF:** I can't find any of them.

28 **BY THE COURT:** Boy, they escaped quick, didn't
29 they?

1 (Brief recess while the Bailiff located the
2 three jurors. Juror 17, MS. TERESA M. FINCH,
3 entered the courtroom first.)

4 **BY THE COURT:** Ms. Finch, come up here just a
5 minute.

6 INDIVIDUAL VOIR DIRE BY THE COURT:

7 Q. Ms. Finch, you had indicated that you might know
8 something about this case; is that right?

9 A. Yes, sir. I just said I might know a little. It
10 is very, very little.

11 Q. Okay, well, tell me what it is that you think you
12 know.

13 A. Okay. I was just at a dinner on Saturday evening,
14 and someone just asked me about doing something this week,
15 and I said I couldn't make any plans because I had, you know,
16 been summonsed for jury duty. And it so happened that this
17 person-- he is not related. I don't even know him, but he is
18 a police officer. And so anyway, he said, "Oh, really? What
19 case are you going to?" And I said, "I have no idea. I
20 don't know anything about it. I just know it's a sequestered
21 trial." And so anyway, all he said was, "I bet it's that
22 case" -- he said that there was a furniture store. I thought
23 it was in Kosciusko. So I really don't know anything about
24 it, but he said that the employees and all were burned in the
25 furniture store and that it was a matter of being
26 disgruntled. And that's all I know.

27 Q. Okay. That's all you have ever heard about it?

28 A. So far as I know. I do read the newspaper here,
29 but I don't recall reading anything about it or anything like

1 that.

2 Q. Okay, and have you ever seen any television
3 coverage or anything like that of it?

4 A. Not that I could remember; no, sir.

5 Q. Based on what this fellow told you, did you form
6 any opinion as to the guilt or innocence of Mr. Flowers?

7 A. No, because I didn't know who it was or anything.
8 I just thought how horrible, you know, for something like-- I
9 mean that would be horrible for anybody to be burned up in a
10 store.

11 Q. Right, but and, right; so in general, it was
12 horrible for the crime; is that what you're telling me?

13 A. Yes.

14 Q. Did you form any opinion as to whether Mr. Flowers
15 did it at all?

16 A. No, sir, because I didn't know anything about it.

17 Q. Okay. Could you set aside what you heard Saturday
18 night and be a fair and impartial juror and base your
19 decision on the evidence as it comes from the witness stand
20 and the instructions on the law that I give you?

21 A. Yes, sir.

22 Q. All right.

23 BY THE COURT: Mr. Evans, do you have any
24 questions of Ms. Finch?

25 BY MR. EVANS: No, sir, not at this point.

26 BY THE COURT: Mr. Lumumba, do you?

27 BY MR. LUMUMBA: Just a couple of questions.

28 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:

29 Q. Good afternoon.

1 A. Good afternoon.

2 Q. Good afternoon. I didn't hear everything you said,
3 but you indicated there was a police, there was a police
4 officer that you were speaking to?

5 A. Yes. He was not in uniform. I didn't know him.
6 He was an acquaintance of someone that my husband and I were
7 having dinner with. He came over and joined our table, and
8 the people that we were with was asking me about doing
9 something this week. And I just had to say no, that I didn't
10 think that I could because I didn't know what this week would
11 hold because I had been summonsed for this case. And I just
12 in essence said, it's a sequestered trial. If I get chosen,
13 I will be, you know, I could be tied up for the week. And
14 that's when the person just, you know, made a statement.

15 Q. About the case, thought it was a case and they
16 said--

17 A. --he just said, "Hmm. I wonder if it's about that
18 furniture store." And that's all I heard.

19 Q. Okay, so--

20 A. I don't know anything about it other than that.

21 Q. Where did he say the furniture store was at?

22 A. I thought it was in Kosciusko because as I told
23 you, I go to Kosciusko every year, you know, for the student
24 convention that I am involved in.

25 **BY THE COURT:** Yes, ma'am.

26 A. And that is the reason it rang a bell to me because
27 I love y'all's town square that is there, and I just--

28 Q. Okay, well, I just had a couple of other
29 questions. One is in terms of being a sequestered jury, was

1 that information supplied to you?

2 A. Yes, sir. It was on the questionnaire that I
3 received because I had to fill it out and mail it back in
4 within 5 days of the time that I received it.

5 Q. Okay. And the second thing is with the-- did, when
6 you heard that, did it ring any kind of bell to you as to
7 about anything you had heard a while ago or anything like
8 that?

9 A. No.

10 Q. It didn't? Okay.

11 BY MR. LUMUMBA: I have no further questions.

12 BY THE COURT: All right. Thank you, Ms.
13 Finch. You may go out and take a break. Ms.
14 Weiss.

15 (Ms. Rayanne M. Weiss enters the courtroom.)

16 BY THE COURT: Yes, ma'am.

17 BY JUROR 18, MS. RAYANNE M. WEISS: I am Ms.
18 Weiss.

19 BY THE COURT: Yeah, I'm sorry. My mind is
20 going two ways.

21 BY MS. WEISS: That is all right.

22 INDIVIDUAL VOIR DIRE BY THE COURT:

23 Q. Ms. Weiss, you are in journalism?

24 A. Yes, sir. I'm in news management at WLOX TV here
25 at the TV station, and I'm not sure if I am familiar with the
26 case or not. I am just being real honest with you. I read
27 the associated press wire every day, and right now, you know,
28 it sounds like any other that has come across the wire, but I
29 don't know that along the way--

1 Q. --Okay. Well, tell me what you think you know.

2 A. Well, I know it's a capital murder trial, and y'all
3 have said it's a furniture store in a small town. I know,
4 you know-- I don't know any specifics.

5 Q. Would you have ever heard anything from anybody who
6 purported to know the facts of this case?

7 A. No, sir.

8 Q. Do you recall any specific news items that you have
9 seen other than maybe the Associated Press coming over the
10 wire service?

11 A. No, sir.

12 Q. Have you ever seen any television coverage of this
13 whatsoever?

14 A. No, sir.

15 Q. Do you recall ever reading in the Clarion Ledger or
16 the Sun Herald anything about this?

17 A. I read those papers every day just like the wire.
18 So I really-- it doesn't stand out, but I probably if it was
19 reported in there, have read it.

20 Q. Okay. If in fact you did, have you formed any
21 opinion--

22 A. No.

23 Q. --on the guilt or innocence of Mr. Flowers in this
24 case?

25 A. No, sir.

26 Q. Do you think you could set aside whatever it is
27 that you might have heard and give him a fair and impartial
28 trial--

29 A. --yes, sir--

1 Q. --based on the evidence as it comes from the
2 witness stand and the instructions on the law that the Court
3 gives you?

4 A. Yes, sir.

5 BY THE COURT: Okay. Mr. Evans?

6 BY MR. EVANS: No questions, Your Honor.

7 BY THE COURT: Mr. Lumumba?

8 BY MR. LUMUMBA: Yes.

9 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:

10 Q. Is it Ms. Weiss?

11 A. Weiss.

12 Q. And you are in journalism?

13 A. Yes, sir.

14 Q. So you read the papers and the wire all the time?

15 A. Uh-hum.

16 Q. Now this is my -- you said you know it was
17 involving a furniture store?

18 A. That's what I believe that they said.

19 Q. Believe that they said, okay.

20 A. Yes.

21 Q. Okay, you don't know what happened in the furniture
22 store?

23 A. No, sir. I don't.

24 Q. You don't have -- okay. Now if this is something
25 that during the course of the trial there may be some
26 statements or something that is made prior to trial starting
27 like in questioning, vivid memories of what has, you know,
28 been, begin to come back into your mind, do you think there
29 is a danger that you may be biased or prejudiced by those

1 kind of things?

2 A. No, sir. I don't think so. I think that if I read
3 about it, it was just like any one of y'all reading it. It's
4 part of my daily work that came across the desk.

5 Q. Okay, so you feel or you know that you could be
6 fair and impartial?

7 A. I believe I could; yes, sir.

8 Q. Okay. It's hard and it is a difficult question to
9 ask you because, you know, at this point we don't know that
10 anything is going to resurrect in your mind, but like the
11 Judge said, there is a difference between "I think" and "I
12 know"; right?

13 A. Uh-hum.

14 Q. Okay. So have you been confronted with-- you have
15 never served on a jury before?

16 A. No, sir. I have covered trials before, but I have
17 never served on a jury.

18 Q. Okay, what kind-- are you covering like criminal
19 trials?

20 A. I come in, and I'm on the Sherry trials. I have
21 sat on the verdicts in both of those cases.

22 Q. Okay. Is there anything about that work you think
23 might in any way--

24 A. No, sir.

25 Q. Okay.

26 BY MR. LUMUMBA: I have no further questions
27 at this time.

28 BY THE COURT: Thank you, Ms. Weiss. You may
29 go outside. Mr. Smith.

1 (Ms. Weiss leaves courtroom, and juror number
2 29, MR. JASON L. SMITH, enters the courtroom.)

3 **BY THE COURT:** Just come around here, Mr.
4 Smith, if you will.

5 INDIVIDUAL VOIR DIRE BY THE COURT:

6 Q. Mr. Smith, you have indicated to the Court earlier
7 that you thought you knew something about this case; is that
8 right?

9 A. That is correct.

10 Q. What is it that you know, Mr. Smith?

11 A. I duck hunt and deer hunt with friends from Winona,
12 the Sproles.

13 Q. The Sproles?

14 A. Mr. Charles--

15 Q. S P R O L E S, isn't it?

16 A. Yes. Mr. Charles works in Greenwood at Norris Book
17 Binding, and they own a little store, Winona Printing, right
18 there in Winona. And I heard--

19 Q. --in downtown Winona?

20 A. Yes, sir. For what it is of downtown Winona.

21 Q. Okay.

22 A. But I have heard--

23 A. They have told you about this case?

24 A. Yes, sir.

25 Q. They have talked to you?

26 A. Yes, sir.

27 Q. Have you talked to them about it a bunch or often?

28 A. No. It is just, I kind of have heard the towns-
29 people speak.

1 Q. Okay. Based on what you heard, Mr. Smith, have you
2 formed an opinion as to the guilt or innocence of Mr.
3 Flowers?

4 A. Honestly, from what I have heard so far, yes.

5 Q. Okay.

6 A. I mean you take a small town like that and
7 something like that happened, a lot of people talk and--

8 Q. Well, that is a fair answer, Mr. Smith, and that's
9 what I needed to know.

10 BY THE COURT: Mr. Evans, do you have any
11 questions?

12 BY MR. EVANS: No.

13 BY THE COURT: How about you, Mr. Lumumba?

14 BY MR. LUMUMBA: Just one quick one.

15 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:

16 Q. Mr. Smith, since when you first came, you had to
17 wait a little while, I guess, until we got kind of organized
18 here with the clerk getting names and all that kind of
19 stuff. During that period of time, did you have a chance to
20 talk to anybody about this?

21 A. No, sir. I really, I put it together last night
22 when I got the recording and they said the name, and I
23 realized what the case was. But from what I knew, I knew
24 better than to say anything to anybody here because I felt
25 like I knew too much.

26 Q. Right. And you haven't heard anybody else talking
27 about the case?

28 A. No. Everybody-- I have kept my mouth shut, and
29 everybody is guessing where it's at, and I haven't heard

1 anybody hit it on the spot yet.

2 Q. Right. Right. Thank you.

3 BY THE COURT: Okay, Mr. Smith, I'm going to
4 ask you, if you will, just keep it in that posture
5 too. Don't say anything about what you know.
6 Okay?

7 BY MR. SMITH: Yes, sir.

8 BY THE COURT: Thank you, sir. Okay, the
9 Court Reporter and I are going to take a break
10 right now.

11 (FOLLOWING A RECESS ON MARCH 22, 1999, COURT
12 WAS AGAIN CONVENED WITH ALL COUNSEL, THE DEFENDANT,
13 AND THE JURY PANEL PRESENT:)

14 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
15 THE JURY AS FOLLOWS:)

16 BY MR. LUMUMBA: There is two things I wanted
17 to bring to the Court's attention. One is I think
18 it may be good if the Court doesn't disagree to let
19 Mr. Smith go so he won't, you know, have any chance
20 of tainting the rest of the jury. That is just a
21 concern I have.

22 BY THE COURT: The trouble is-- I agree with
23 you, but I don't want to let him go -- I might
24 should have done it beforehand. I don't want to
25 let him go right in the middle of this. We may
26 start a stampede.

27 BY MR. LUMUMBA: Okay.

28 BY THE COURT: At the next break I will.

29 BY MR. LUMUMBA: Okay.

1 **BY THE COURT:** I don't really think he is
2 going to say anything, or he would already have.

3 **BY MR. LUMUMBA:** Okay. The second thing is
4 the--

5 **BY THE COURT:** And I tell you what; you remind
6 me if I forget. At the end of voir dire after
7 everybody is through, I will ask them specifically
8 if anybody has said anything to them about this
9 case. Will that work?

10 **BY MR. LUMUMBA:** Okay, that is important. The
11 other thing, Judge, is that we-- one of our motions
12 in limine was to exclude any testimony on the three
13 acts that occurred or three deaths that occurred at
14 the time that Stewart's death occurred. Now I know
15 that is a motion you entertained before. Prior
16 counsel raised that in relationship to the other
17 case. In fact, that is one of the issues, I guess,
18 they are raising for appeal, and I don't know if
19 they have to send you a copy of the brief. Have
20 you seen a copy of the brief?

21 **BY THE COURT:** They have sent me a copy, but I
22 haven't read it.

23 **BY MR. LUMUMBA:** You have not read it. Okay.
24 Okay, but in any event, we want to make that
25 motion. The only reason I am raising it now is
26 because if it's not going to be granted, then I
27 think it is important, and hopefully it will. I'm
28 not trying to say it shouldn't be.

29 **BY THE COURT:** I understand.

1 BY MR. LUMUMBA: But I think that we need to
2 be in a position where we can voir dire on that
3 kind of openly because see, a lot of people are
4 going to remember this case. If they are going to
5 remember it at all, they are going to remember it
6 when they hear something about four people supposed
7 to have died, and that is not a contested issue
8 with us. You know, we are not contesting that four
9 people died. So it really does us no good not to
10 raise it. You know what I'm saying? If it is
11 coming out. Now if it's not coming out, then, of
12 course, we don't want to raise it.

13 So my motion in limine would be to exclude
14 that because we think that it's more prejudicial
15 than probative, and we feel that since Counsel has
16 chosen to try the cases separately, then the same
17 law applies about bad acts under their prior to or
18 whatever, they cannot be used against a defendant
19 in a particular case. And that goes, and as long
20 as I am raising it as to those acts that occurred
21 on that same day, I will also raise it as it
22 relates to burglary. There was supposed to have
23 been a burglary. For some reason evidence came out
24 of that at the last trial.

25 **BY THE COURT:** Did it? I didn't recall that.

26 BY MR. LUMUMBA: Yeah.

27 BY MR. EVANS: I don't recall it either.

28 BY MR. LUMUMBA: Okay, but anyway--

29 BY MR. EVANS: --There is some evidence he

1 committed one, but it didn't come out in the trial.

2 **BY THE COURT:** Right. And I'm not going to,
3 we are not going to get into that.

4 **BY MR. LUMUMBA:** Okay.

5 **BY THE COURT:** But now as to the other three,
6 the law, as I understand it, is that because of the
7 way the facts are in this case and the way the
8 facts rolled out the first time and the nature of
9 things, that they are so intertwined that there is
10 no way to separate them out. So I think of
11 necessity they have, it has got to come out for the
12 jury to get the complete story of what happened.
13 And with that in mind, you are going to be entitled
14 to ask them those things in relation to that. I'm
15 going to let you do it rather than me do it.

16 **BY MR. LUMUMBA:** Okay.

17 **BY THE COURT:** And I think you are entitled to
18 go into that. But I also think having, looking at
19 the facts and then looking at the law that I read
20 on it, there is just no way to separate it out.
21 And for the jury to get the complete story of what
22 went on, I think they have got to know that these
23 other folks died.

24 **BY MR. LUMUMBA:** Okay, so--

25 **BY THE COURT:** So I am overruling the Motion.

26 **BY MR. LUMUMBA:** Overruling the motion.

27 **BY THE COURT:** Now let me say this. I don't
28 see at this time any necessity for sequestered,
29 individual sequestered voir dire of all these

1 people in relation to the death penalty. So I'm
2 going to go on into my voir dire on it. As those
3 things develop, I may change my mind on that as I
4 see what it is. But at least at this point in
5 time-- I don't even know how many of them are going
6 to have any scruples about it, and we will see
7 where we go on that.

8 But my inclination-- well, my ruling at this
9 time is I'm not going to do it right now.

10 BY MR. LUMUMBA: All right.

11 END BENCH CONFERENCE.

12 BY THE COURT: Okay, is everybody back? Make
13 sure I have got everybody here.

14 CONTINUED VOIR DIRE BY THE COURT:

15 This case is a capital case. That means that
16 it could ultimately, depending on what happens, result in the
17 death penalty. What has to happen first is that we have to
18 have a trial to determine the guilt or innocence of Mr.
19 Flowers. If the jury should then find that Mr. Flowers is
20 guilty, then we will have another trial, and that trial will
21 determine what the penalty would be. In this case the jury
22 determines the penalty in this matter, and death is one of
23 those options.

24 The first trial, you will have to decide that first
25 trial as to his guilt or innocence solely on the evidence as
26 you hear it from the witness stand and using my instructions
27 on the law like I told you while ago. You must hear the
28 evidence up here, what the people say and what I admit into
29 evidence. You go back and determine what that evidence

1 shows. You find those facts. You must apply the law that I
2 give you to those facts and determine the guilt or
3 innocence.

4 If you, in fact, find Mr. Flowers guilty, then we
5 have another trial, and you will have additional evidence
6 that will come from the witness stand from both sides in all
7 likelihood for you, to give you some evidence to determine
8 whether in your opinion based on those facts that you have,
9 that you can decide what punishment based on those facts and
10 the instructions on the law that I give you at that time.
11 What you are not entitled to do is base either one of those
12 decisions on anything other than the evidence that you hear
13 in this courtroom or is presented to you by way of documents
14 or evidentiary physical evidence that I give to you or
15 anything on the law other than what I tell you is the law.
16 Now is there anybody here that will not do that? Is there
17 anybody that will not do that?

18 Okay, now I need to know if there are any members
19 of the jury panel who cannot, cannot impose the death penalty
20 if the facts warrant it and I tell you the law allows it, and
21 not only that, that that would affect you as to whether you
22 could determine the guilt or innocence if the facts warranted
23 that or if the law allowed it? How many of you have any
24 religious or philosophical scruples that would prevent you
25 from imposing the death penalty? (Several hands go up.)

26 Okay, let's start over here. Ms. McClelland, I
27 think it is. You raised your hand, didn't you, Ms.
28 McClelland?

29 A. (BY JUROR 23, MS. LUCILLE W. MCCLELLAND) Right.

1 Q. Okay, would you mind standing up, please, ma'am?
2 That way I can hear you a little bit better.

3 Q. After you have heard this case, after it got to the
4 point where you one, had to determine the guilt or innocence
5 or maybe at such time as later that you had to determine the
6 penalty in this case and you found that the evidence
7 warranted a conviction or warranted the death penalty and I
8 told you that the law would allow both of those, that it was
9 possible under the law for that to happen, could you still
10 not impose the death penalty?

11 A. I don't think I could.

12 Q. You could not under any circumstances; is that
13 right?

14 A. No, sir.

15 Q. Thank you, Ms. McClelland. What is your number,
16 Ms. McClelland?

17 BY MR. HORAN: 23.

18 A. (BY JUROR MS. McCLELLAND) 23.

19 BY THE COURT: Okay. Number 2, Ms. Green?

20 A. (BY JUROR 2, MS. EVA M. GREEN) I don't think I
21 could either.

22 Q. Okay, Ms. Green, let me just go through it with you
23 and say again if the evidence from the stand, if you found
24 from the evidence from the stand that it warranted a finding
25 of guilt or that the death penalty was warranted based on
26 those facts, and I told you that the law allowed you to
27 impose the death penalty, do you think you could do that
28 under any circumstances?

29 A. No.

1 Q. You could not do it?

2 A. No.

3 Q. Thank you, ma'am.

4 All right, number 4, Ms. Necaise.

5 A. (BY JUROR 4, MS. DIANE NECAISE) No, I don't think
6 I could do that.

7 Q. Regardless of what the evidence is and what I told
8 you the law was?

9 A. (Juror Ms. Necaise nods her head.)

10 Q. You could not do it under any situation?

11 A. No, sir.

12 Q. Thank you, ma'am.

13 Anybody else on this side? Number 5. Ms.
14 Yarbrough.

15 A. (BY JUROR 5, MS. LINDA YARBROUGH) Yes, sir. I
16 could not.

17 Q. Even if the evidence warranted it and I told you
18 the law allowed it, you could not do it; is that correct?

19 A. Not with a true conscience, no.

20 Q. Thank you, ma'am.

21 Number 43. Ms. Henson. Ms. Henson, I'm going to
22 be repetitive because I have to be. Even if the evidence
23 warranted it and I instructed you that the law allowed it,
24 could you, are you telling me that you could not impose the
25 death penalty? Is that what you're saying?

26 A. (BY JUROR 43, MS. NELENNE L. HENSON) That's what
27 I'm telling you.

28 Q. Are you telling me you could not under any
29 circumstances?

1 A. Never, Your Honor.

2 Q. Okay, thank you, ma'am.

3 Number 49, is Ms. Rishel?

4 A. (BY JUROR 49, MS. DOROTHY DICKSON RISHEL) Yes,
5 sir. I am opposed to the death penalty on religious grounds.

6 Q. You are? And you could not impose it under any
7 circumstances? Is that correct?

8 A. Right.

9 Q. All right, I'm sorry; I missed somebody over here.
10 Number 71, Ms. Pickich?

11 A. (BY JUROR 71, MS. LAURA M. PICKICH) Yes.

12 Q. Ms. Pickich, could you impose it if the evidence
13 warranted it and I told you the law allowed it?

14 A. No, sir. I could not on religious grounds.

15 Q. On religious grounds?

16 A. No, sir. Right.

17 Q. You could not impose it under any circumstances?
18 Is that what you're telling me?

19 A. Right.

20 Q. Okay.

21 All right, let's go over here. Number 15, Mr.
22 Overstreet.

23 A. (BY JUROR 15, MR. JAMES M. OVERSTREET) Yes. I
24 would have problems with it.

25 Q. Okay. And that would be a difficult decision for
26 anybody. But the law is if after hearing the evidence, you
27 heard that evidence and you found that the evidence warranted
28 first, you finding of a guilty verdict and second, then at
29 the second stage you found that it warranted the death

1 penalty, and I told you or gave you an instruction on the law
2 and said that it was allowable in this case, do you feel that
3 you still could not impose the death penalty?

4 A. I wouldn't say I could not, but I have a problem
5 with it.

6 Q. Okay. There again, Mr. Overstreet, I hate to have
7 to tie you out, but I need to know one way or another. And
8 it is okay, whichever way you can.

9 A. I just can't give you a definite answer.

10 Q. Okay. Thank you, Mr. Overstreet.

11 Number 18, Ms. Weiss?

12 A. (BY JUROR 18, MS. RAYANNE M. WEISS) I believe in
13 the death penalty. I just don't know as a person that I
14 could vote to have someone--

15 Q. --Would you stand up, please, ma'am? I can't hear
16 you.

17 A. I said I believe in the death penalty, but I don't
18 know if as a person I could, my conscience would allow me to
19 vote for it. So if you push me, I am uncertain just like
20 this gentleman. If you pushed me, I would say no.

21 Q. You would say no?

22 A. That I do not believe I could vote the death
23 penalty. But I am uncertain.

24 Q. Y'all understand I have to push you some?

25 A. I am very uncertain, but I believe in the death
26 penalty.

27 Q. Thank you, Ms. Weiss.

28 Number 61 is Ms. Walker. Ms. Walker, if the
29 evidence warranted it and I told you the law allowed it,

1 first could you, would that, because the death penalty is
2 involved, would that affect whether or not you could find
3 somebody guilty? And then secondly, if it was guilty, would
4 it affect whether or not you could give the death penalty?

5 A. (BY JUROR 61, MS. SYLVIA J. WALKER) Yes.

6 Q. Do you think that you could not under any
7 circumstances?

8 A. No.

9 Q. Thank you, Ms. Walker.

10 Number 56, Ms. Sallis?

11 A. (BY JUROR 56, MS. CATHERINE BLAKELY) Blakely.

12 Q. I'm sorry. I got that-- Ms. Blakely. I apologize,
13 Ms. Blakely. I did not hear your answer?

14 A. Well, I don't think I could impose the death
15 penalty if I didn't know if he was really guilty.

16 Q. Okay, and that goes back to what I'm asking you,
17 Ms. Blakely. You are going-- if you sit on this jury, you
18 are going to hear all the evidence in this case.

19 A. Yes.

20 Q. And you are going to get everything that I allow to
21 be admitted into evidence to go back to the jury room and
22 look at. If after looking at all that, you find that the
23 evidence warrants first, a determination that he is guilty,
24 and then if that determination is made, then a determination
25 that the death penalty would apply in this case and I told
26 you that the law said in this case you could do that if you
27 found that's what had to be done. Could you still not impose
28 the death penalty in this case?

29 A. No.

1 Q. You could not?

2 A. No.

3 Q. Ms. Blakely, could you impose the death penalty
4 under any circumstances?

5 A. Yes.

6 Q. You could. What would that take, ma'am?

7 A. If I really knew somebody was guilty.

8 Q. Okay.

9 A. I would have to just--

10 Q. Okay. Well, let me take it another way then. The
11 first thing you would have to do before the death penalty
12 ever came into play; there have got to be two trials.

13 A. Yes.

14 Q. For the death penalty to even be a factor. It is
15 not even something really to be considered totally until such
16 time as the jury has determined that the person is guilty.
17 So if you were on the jury, you would have to be convinced
18 beyond a reasonable doubt that that person was guilty. Let's
19 say if you did that and you returned a verdict of guilty, and
20 then there were facts presented to you about whether or not
21 the death penalty ought to be imposed or some other penalty
22 imposed, and I told you that in this case under the facts
23 that it was an allowable thing for the death penalty to be
24 imposed if the jury found that's what they ought to do, could
25 you still not impose the death penalty even if you had found
26 him guilty?

27 A. No.

28 Q. Thank you, ma'am.

29 Okay, anybody else? Number 28.

1 A. (BY JUROR 28, MR. EUGENE CROCKETT, JR.) Sir.

2 Q. Yes, sir, Mr. Crockett.

3 A. I think I would have problems too with deciding
4 whether a person lived or died.

5 Q. Okay, like I say, Mr. Crockett, most everybody here
6 would have that problem. These are not easy cases for
7 anybody to sit on, but here is the test. The test is first
8 you have to determine from the facts as you determine them
9 whether or not this man is guilty, and you have to determine
10 that based on the facts as you see them and the instructions
11 on the law as I give them to you. Nothing else happens until
12 that is done. Once the jury has determined that the person
13 is guilty, then there is a second phase to this trial where
14 we have another trial to determine whether he gets death or
15 not or some other penalty, and the jury decides. And the
16 jury then must take the evidence presented at that second
17 portion of the trial, and they must apply my instructions on
18 the law to that as to whether or not the death penalty can
19 even be given in that particular case. And based on that, my
20 question to you is if you found, and let's say at the first
21 phase you had found him guilty; at the second phase if you
22 found that the evidence warranted him getting the death
23 penalty, could you impose the death penalty?

24 A. Well, sir, I would like to say yes, I do. But
25 first I have to feel that it's, it's important for me being a
26 citizen, you know. Do you see what I mean?

27 Q. Yes, sir. I do understand.

28 A. And if it is necessary for me as an American
29 citizen, you know, I would probably say yeah.

1 Q. Well, Mr. Crockett, it is only necessary if, in
2 fact, you determine that the evidence warrants it and the law
3 allows it, and I will tell you whether the law allows it. So
4 it will be up to you, and if you found that it was necessary,
5 could you impose it?

6 A. Well, in the sake of good citizenship, I would
7 probably say yeah.

8 Q. Thank you, Mr. Crockett.

9 Anybody else? (No further response.)

10 Okay, there is a reverse to that question. And the
11 reverse is, is there anybody on this jury panel who would
12 automatically impose the death penalty if they found the
13 Defendant guilty, then would they automatically impose the
14 death penalty? Now automatically is not really the correct
15 word. That is not the right phrase. Would you, regardless
16 of what the evidence showed or what the instructions on the
17 law said, if you found him guilty, would you then feel that
18 you had to impose the death penalty regardless of what I told
19 you the law was or what the evidence was that you found?

20 All right, that is number 40, Mr. Connor. You
21 would, Mr. Connor?

22 A. (BY JUROR 40, MR. PATRICK E. CONNOR) Yes, I would,
23 Your Honor.

24 Q. Okay. Thank you, sir.

25 All right, number 31, Mr. Maynard.

26 A. (BY JUROR 31, MR. ROBERT A. MAYNARD) Yes, sir.

27 Q. You would, Mr. Maynard?

28 A. If the law allows it, it would be my first choice.

29 Q. Okay, well--

1 A. --If he were found, if the gentleman were found
2 guilty and it were prescribed under law that that would be an
3 option, that would be my first choice.

4 Q. Okay, but the question really is, Mr. Maynard, is
5 would you listen to the evidence at the sentencing portion of
6 the trial, the second trial; would you listen to that
7 evidence and base your decision on that evidence as it came
8 from the witness stand and then make your decision?

9 A. I can't say that I would.

10 Q. Okay, thank you, Mr. Maynard.

11 Did I see somebody over here? (No further
12 response).

13 Other than those of you who have told me that for
14 one reason or another you could not be a fair and impartial
15 juror or for those who have just answered the questions about
16 the death penalty where you said you could not impose it
17 under any circumstances, is there anybody else on the jury
18 panel for any reason whatsoever, knows any reason why they
19 cannot be fair and impartial in this case?

20 Okay, the panel is tendered to the State for voir
21 dire.

22 BY MR. EVANS: Thank you, Your Honor.

23 VOIR DIRE EXAMINATION BY MR. EVANS:

24 Ladies and gentlemen, I am Doug Evans, and I am the
25 District Attorney from the Fifth Circuit Court District.
26 That is the district where this crime occurred. This is
27 Kevin Horan. He is one of the assistants that work with me.
28 This is Walter Bleck. The three of us will be presenting the
29 case to you for the State of Mississippi.

1 Now the first thing that I want to point out is
2 that this crime did not occur down here on the coast. And I
3 know that some of these questions may sound kind of silly to
4 some of you, but the reason we ask these questions is because
5 of responses we have gotten in the past when we ask questions
6 to other jury panels. And if it only applies to one person,
7 it is important to us. If it doesn't apply to anybody, we
8 need to know it. But the question is just because this case
9 did not occur here in your county, is there anybody here on
10 this panel that would feel well, I just don't care. I don't
11 care that a murder may have happened somewhere else. They
12 should be trying that somewhere else. We didn't have
13 anything to do with it.

14 Is anybody here that would have that feeling? If
15 you do, please raise your hand and let us know.

16 As the Judge told you, the case that we will be
17 trying is a capital murder. It is a murder that occurred
18 during the commission of an armed robbery. In that
19 particular murder there were four people killed. This
20 particular case that y'all will be looking at only deals with
21 one of those deaths. The other cases are separate. Do each
22 of y'all understand that this particular case only deals with
23 one victim?

24 I'm going to be fairly short. I don't have a whole
25 lot to go over with y'all, but I do have a few things I need
26 to go over. I am going to cover a couple of things, and then
27 I'm going to go into the death penalty part. But as the
28 Judge has told y'all, and I'm going to try not to repeat the
29 things that he told you for the benefit of speed, but there

1 are a few things I need to go over a little bit more.

2 As the Judge has told you, at this point in this
3 trial in any criminal trial this Defendant sitting over here
4 or any defendant that sits in the courtroom at this phase of
5 a trial is presumed innocent. That is a very important fact
6 of law. That fact of law is there for one basic reason.
7 Nobody can be found guilty unless they have been proven
8 guilty in a court of law. So at this particular point in
9 this trial or any other trial, any jury panel, y'all or
10 anybody else that is sitting out there, if you were asked to
11 vote whether this Defendant was guilty at this point, under
12 your oath to do what the Judge told you, each of you would
13 have to vote not guilty because you have heard no evidence.

14 Is there anyone here that has any problem with that
15 theory of law?

16 All right, now the reverse of that theory of law is
17 that the burden of proof is on us, the State of Mississippi
18 to prove to you that this Defendant is guilty. Once we have
19 proven to you that he is guilty beyond a reasonable doubt,
20 then that burden of proof changes, or then that presumption
21 changes. It no longer is there to protect him; it
22 disappears. Do any of y'all have any problem with that
23 theory of law?

24 Another question that I always go into again and
25 the reason I do is because this is a question that most
26 people sitting on the jury panel have never thought about,
27 and that is what the Judge asked about religious or personal
28 beliefs. At this point I'm not even talking about the death
29 penalty. I am just talking about sitting in trial of

1 someone. There are people that because of religious or
2 personal beliefs, feel that they should not judge anyone
3 else, and it's fine to have that belief, but it is not fine
4 to pick someone on a jury with that belief.

5 And the reason for that, if you were picked as a
6 juror and you had the belief, even though you had the belief
7 that you could not sit in judgment of someone and decide
8 whether they were guilty or innocent, we could possibly go
9 through a week of trial. The jury could go out and
10 deliberate on guilt or innocence, and one out of the group
11 that is back there deliberating might just throw up their
12 hands and say, "I'm sorry; I just don't think it is right for
13 me to judge someone else." It would be all right for that
14 juror to have that belief, but that juror would have wasted
15 everybody's time because they would be back there. The rest
16 of the jury would be trying to do what the Judge told them
17 and deliberate on the evidence, and that juror would keep
18 them from doing that.

19 So if there is anyone here today that even thinks
20 that they could not sit in judgment of someone and listen to
21 the evidence, please raise your hand and let us know. (Juror
22 number 4 raised her hand.)

23 **BY THE COURT:** That was Ms. Necaise raised her
24 hand.

25 **BY MR. EVANS:** Number 4, Ms. Necaise.

26 Q. Okay, you believe that you could not do that; is
27 that correct?

28 A. (BY JUROR 4, MS. DIANE NECAISE) I believe that I
29 could not.

1 Q. Okay. Anyone else? Yes ma'am, number 61?

2 A. (JUROR 61, MS SYLVIA J. WALKER gave an inaudible
3 response.)

4 Q. I'm sorry; I couldn't hear you. What was your
5 response, please?

6 A. It would be against my religion.

7 Q. Okay, it would be against your religion.

8 Anyone else? (No further response.)

9 BY MR. EVANS: All right, I want to go for a
10 minute into what the Judge covered on the death penalty. I
11 know a lot of y'all have already answered this, and most of
12 those we will not need to go back into. But is there anyone
13 on this panel that has not previously answered that because
14 of their beliefs, feel that they could not even consider the
15 death penalty as a proper punishment regardless of the facts
16 of the case and regardless of what the law is? Anyone that
17 has not already answered to that? (No response.)

18 A death penalty trial is different than any other
19 case. If this were a burglary or a case like that, the jury
20 would hear the evidence one time. They would go back and
21 deliberate and vote guilty or not guilty, and that would be
22 the end of it. In a capital case where the death penalty is
23 a proper punishment to consider, the jury does that exact
24 thing on what is called the first phase of the trial. You
25 will hear evidence. After you have heard evidence, the Judge
26 will read you instructions and tell you what law applies to
27 this particular case. Once you have listened to the evidence
28 and heard the instructions, you will go back in the jury
29 room. You will deliberate on only guilt or innocence. At

1 that point you cannot even consider what proper penalty, what
2 penalty is proper.

3 Is there anyone here that has any problem with that
4 theory of law or disagrees with it?

5 The way that works then is that if a jury returns a
6 guilty verdict of capital murder back into the courtroom to
7 the Judge, then we go into a separate phase. In that phase
8 both sides can put on evidence for you to hear, and the Judge
9 will give you complete different instructions. I'm not going
10 to sit here and go through all those instructions because the
11 Judge hasn't given them yet, but in those instructions the
12 Judge will tell you step by step what you must consider. And
13 you have to find certain elements before you can determine
14 which penalty is proper. And if you follow the instructions
15 as the Court has given them to you, it will explain to you
16 what you must find in that phase before the Defendant can be
17 sentenced.

18 Now I think we had two jurors that said they would
19 automatically consider the death penalty. Which two were
20 those? (Jurors number 40 and 31 raised their hands.)

21 All right, number 31.

22 BY MR. LUMUMBA: May we approach, Judge?

23 BY THE COURT: Yes.

24 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
25 THE JURY AS FOLLOWS:)

26 BY MR. LUMUMBA: Judge, I have got two things
27 I wanted to raise at this time. I believe that the
28 most effective way to attempt a rehabilitation
29 would--

1 BY MR. EVANS: --Your Honor, if this is an
2 objection, he needs to state it. I'm in the middle
3 of voir dire.

4 **BY THE COURT:** He is stating it right now.
5 Let him state it.

6 BY MR. LUMUMBA: My objection goes to
7 continuing to ask questions on the voir dire at
8 this point to jurors who have taken a position
9 other than in individual voir dire. I think that
10 they needed to be addressed individually. So we
11 don't want their position to prejudice anybody
12 else, and we wanted to be able to get inside of
13 their heads. And I think that the law requires
14 that we do be able to rehabilitate, and there are
15 several people we need to rehabilitate. So that is
16 the first issue I would like to raise.

17 BY MR. EVANS: In response to that, the State
18 Supreme Court has clearly said that it is never the
19 law that individual voir dire is necessary in the
20 State of Mississippi. We have gone into this; all
21 I'm attempting to do is to attempt to rehabilitate
22 these two jurors.

23 **BY THE COURT:** Well, yeah, but he has got nine
24 that he is going to try to rehabilitate.

25 BY MR. EVANS: If he wants to, he has got that
26 choice.

27 **BY THE COURT:** Well, I know. I expect him
28 to. Eleven is not too many, and I'm going to do
29 individual on those eleven. I will do individual

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 voir dire on those eleven. So if you want to
2 rehabilitate them, you can hold your questions
3 until I do that. Okay.

4 END BENCH CONFERENCE.

5 **BY THE COURT:** Yes, ma'am. Number 8, excuse
6 me.

7 BY JUROR 8, MS. PATRICIA A. TURNER: I am the
8 3 o'clock loan closing that you told me to remind
9 you.

10 **BY THE COURT:** Okay. Let me see the lawyers
11 back up here just a minute.

12 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
13 THE JURY AS FOLLOWS:)

14 **BY THE COURT:** Are you about through?

15 BY MR. EVANS: It would probably be better to
16 go ahead and break and let her go if you want to
17 let her go.

18 BY MR. HORAN: We could do the individual and
19 start back up after she gets back.

20 **BY THE COURT:** Yeah. Would that, how does
21 that suit y'all to do the individual while we take
22 the break?

23 BY MR. EVANS: Will be fine with me.

24 BY MR. LUMUMBA: The only problem I have with
25 that, Judge, we may find out once like, for
26 instance, I'm going to ask questions, and we may
27 find out there needs to be some other individual.
28 And I kind of hate to break at this point when
29 nobody has spoken except the DA. I mean I hate

1 to-- that is my concern. And the main concern is
2 that we don't know whether there is other
3 individuals that we are going to need--

4 BY MR. EVANS: I thought the Court said we
5 couldn't go any more into the death penalty.

6 BY MR. LUMUMBA: He didn't say we couldn't go
7 anywhere; he said we couldn't try to rehabilitate--

8 BY MR. EVANS: --I need to know because I may
9 have a lot of other questions on just the death
10 penalty.

11 BY MR. LUMUMBA: He said we can't try to
12 rehabilitate people.

13 BY THE COURT: That's what I said.

14 BY MR. LUMUMBA: Yeah, yeah.

15 BY MR. EVANS: Okay.

16 BY MR. HORAN: Are you going to break and do
17 these eleven?

18 BY THE COURT: Well, we need to keep as many
19 jurors as we can. So why don't we break until
20 3:30?

21 BY MR. EVANS: Will be fine with me. She said
22 it would take her about 20 or 30 minutes.

23 BY MR. HORAN: You don't want to do the
24 individual? Just guessing on whether or not there
25 is going to be any more. We know there is going to
26 be the eleven.

27 BY THE COURT: Why don't, why can't we do the
28 individual of the ones we know, and then we will do
29 individual if you produce any more. Would that be

1 all right?

2 BY MR. LUMUMBA: All right, we are going to do
3 that.

4 BY THE COURT: Okay, all right.

5 END BENCH CONFERENCE.

6 BY THE COURT: Ms. Turner. Okay. We are
7 going to do-- I'm going to try to accommodate Ms.
8 Turner. We are going to do a little bit
9 different. We are going to still be doing some
10 stuff, but we are going to give most of y'all a
11 break for about 30 minutes. Ms. Turner, you think
12 you will be back by 3:30?

13 BY JUROR 8, MS. PATRICIA TURNER: Yes.

14 BY THE COURT: Okay. We will start back with
15 everybody in here at 3:30. There are certain of
16 you that we will need to have in here individually
17 while the rest of you are on break, or while all of
18 y'all are on break, we are going to have some of
19 you in here. We have some questions for some of
20 you in relation to some of this. So we will be
21 working during that period of time, but I'm going
22 to give you a break until 3:30.

23 If y'all will, before you go to the rest room
24 or wherever, when you get out in the hall, if you
25 will just stand there a minute, the bailiff will
26 come tell you the ones that need to be available
27 for us.

28 (The Court gave a list of numbers to the
29 Bailiff. THE JURY LEFT THE COURTROOM.)

1 **BY THE COURT:** Gentlemen, y'all want to come
2 up here and compare notes with me just a second;
3 make sure I have got everybody.

4 **BY MR. HORAN:** Judge, I didn't know if you
5 wanted to just name the ones that we were going to
6 need and let the rest of the jurors go because they
7 can stay out there until you get through if you are
8 going to do them one at a time.

9 **BY THE COURT:** That's what I said. I have
10 already told the bailiff that. Okay, here is the
11 ones I have. I have number 2; I have number 4; I
12 have number 5. Number 15, Mr. Overstreet is
13 undecided, so I'm counting him. Number 18, number
14 23, number 31, number 40, number 43, number 49,
15 number 56, number 61, and number 72.

16 **BY MR. LUMUMBA:** 72?

17 **BY THE COURT:** Uh-hum.

18 **BY MR. LUMUMBA:** You said 71; right?

19 **BY THE COURT:** No, I did not say 71. I said
20 72.

21 **BY MR. LUMUMBA:** I must have wrote down--

22 **BY MR. EVANS:** --I have got 71.

23 **BY MR. HORAN:** It's 71.

24 **BY THE COURT:** Was it 71? Then I wrote it
25 down wrong. Okay.

26 **BY MR. LUMUMBA:** Yeah, I don't think I wrote
27 72 down.

28 **BY THE COURT:** Okay.

29 **BY MR. HORAN:** You said 31 and 40, didn't

1 you?

2 **BY THE COURT:** 31, I said and 40.

3 BY MR. HORAN: 56 and 61.

4 BY MR. EVANS: Your Honor, and I don't want to
5 waste time, but you may want to consider sticking
6 28 on there while we are doing them anyway. It
7 just, it doesn't matter. It is fine.

8 **BY THE COURT:** He means Mr. Crockett who said
9 that if-- he said he could do it.

10 BY MR. LUMUMBA: Yeah, right. I think he said
11 he did.

12 **BY THE COURT:** Let's take Ms. Green.

13 (JUROR NUMBER 2, MS. EVA M. GREEN was brought
14 into the courtroom for individual voir dire.)

15 **BY THE COURT:** Ms. Green, if you would come
16 around and take a seat up here, please, ma'am. The
17 lawyers have a couple of questions for you.

18 (NOTE: THE REST OF THE JURY PANEL WAS NOT
19 PRESENT EXCEPT THE JUROR BEING QUESTIONED ON ANY OF
20 THIS INDIVIDUAL VOIR DIRE.)

21 INDIVIDUAL VOIR DIRE BY MR. EVANS: (Juror 2, Ms. Green).

22 Q. Hi, Ms. Green. How are you doing?

23 A. Fine. You?

24 Q. Doing fine. We've just got a couple of questions
25 we need to ask just to try to follow up on some questions
26 that the Judge had asked you. This is just on the part about
27 the death penalty. It doesn't have anything to do with any
28 of the other questions. On the death penalty issue, you
29 understand the law as the Judge has given you, that you would

1 have to be able to consider the death penalty as a possible
2 penalty in this type case?

3 A. Yes.

4 Q. And if I understood right, what you are telling the
5 Court and you are telling the lawyers here is that you do not
6 believe in the death penalty. Is that correct?

7 A. That's true.

8 Q. And in this case or any other case, regardless of
9 what the facts were, you could not consider the death penalty
10 as a possible punishment. Is that correct?

11 A. Yeah, I couldn't live with it.

12 Q. And you could not give the death penalty or even
13 consider the death penalty as a possible punishment in any
14 case; is that right?

15 A. True.

16 BY MR. EVANS: Nothing further, Your Honor.

17 BY MR. LUMUMBA: May I proceed?

18 BY THE COURT: Uh-hum.

19 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Juror 2, Ms. Green).

20 Q. Good afternoon, Ms. Green.

21 A. Good evening.

22 Q. Good evening. Good evening to you. My name is
23 Chokwe Lumumba, and I am, of course, representing Mr. Curtis
24 Flowers along with my partner, Harvey Freelon, and we are
25 being aided in this trial by Mr. Ervin Bradley. And so I
26 would like to just ask you a few questions. Okay?

27 A. Yes, sir.

28 Q. And my questions are geared more or less to explore
29 and see if you, you know, that you thoroughly understand what

1 we are asking and are responding to it in that way. Now
2 first of all, the Judge said something that is very
3 important, okay. And a lot of times when we talk about the
4 death penalty, people just, that's all they think about.

5 A. Yes.

6 Q. And they lose focus of the fact that this man, as
7 he sits here, is not guilty. All right, he is presumed
8 innocent. Do you understand what I'm saying?

9 A. Yes.

10 Q. And you're willing to follow that instruction as
11 far as the Judge is concerned; right? When the Judge gave
12 you that instruction that he was presumed innocent, you still
13 follow that instruction; right?

14 A. I understand just what he said.

15 Q. Okay, and I appreciate that.

16 A. Yes.

17 Q. So what that means, of course, and our view is he
18 has pled not guilty, and our view is there will never come a
19 time, at least that's what we submit--

20 A. Right.

21 Q. That there will never come a time when the death
22 penalty will be an issue because he will never be found
23 guilty. That's our--

24 BY MR. EVANS: --Your Honor, I object. That
25 is not proper for what we are back here on.

26 BY THE COURT: I'm going allow a full voir
27 dire on this now.

28 BY MR. LUMUMBA:

29 Q. Okay, so that is the Defense's view, right. And we

1 will, and so that there will never be a time to even consider
2 this. Do you understand what I'm saying?

3 A. But suppose it does.

4 Q. And that's what I'm going to get to. Okay?

5 A. Yes.

6 Q. But that's our view, okay. Secondly, you
7 understand that there is different people with different
8 views about the death penalty. Some believe in it, and some
9 don't; right?

10 A. Right.

11 Q. Okay, and we are all in one society; right?

12 A. Right.

13 Q. And the law, as I understand it, and the Judge can,
14 of course, correct me if I am wrong; it attempts a balancing
15 act. It attempts to balance those views. Do you understand
16 what I'm saying?

17 A. Yes.

18 Q. To some degree. What it says now in this
19 particular society, there is-- and in any case, since we
20 don't believe that there is going to be any reason to
21 consider it here, what I am really asking you is kind of like
22 I'm just asking you what you can do in any case. Do you
23 understand what I'm saying?

24 A. Uh-hum.

25 Q. I'm not asking you necessarily about this man. I'm
26 just asking you about any case.

27 A. Any man, anybody.

28 Q. Okay. So now what I'm asking you is this here.

29 Because of the views, or there is views of people who believe

1 in it and views of people who don't believe in it. The law
2 does not preclude people who don't believe in it from sitting
3 on juries. Do you understand what I'm saying?

4 A. Yes.

5 Q. They don't preclude them from sitting on juries
6 where there is capital murders; right.

7 A. But I would be just wasting your time just like you
8 said.

9 Q. Okay, but that's what I want to ask you. And if
10 you would, then I would like to know. But let me, because
11 see if everybody who didn't believe in it couldn't sit on a
12 jury, then we would only have one point of view there; isn't
13 that right?

14 A. I understand, yes.

15 Q. Now this is what the law says. First of all, the
16 law and concern for our belief in life says first of all, you
17 have to find a person guilty before you even think about a
18 death penalty.

19 A. That is true. I understand.

20 Q. Okay. Secondly, the Judge was telling you in a
21 short way that once you get in the death penalty phase, if
22 you ever get there, there is different hurdles you have got
23 to jump. Do you understand what I'm saying? You can't-- and
24 first of all, you can't just automatically-- well, he will
25 give you instructions on the law is that there are certain
26 things that the prosecution has got to show even after the
27 man has been found guilty. They have got to show certain
28 things before you can even consider the death penalty. Do
29 you understand what I'm saying?

1 A. (Ms. Brown nods her head.)

2 Q. If they don't show those things, and I think the
3 Judge will call them aggravating factors, but you know, he
4 will have to explain them to you, you know; things, reasons
5 why maybe the death penalty should be appropriate. Do you
6 understand that I'm saying?

7 A. I understand.

8 Q. They have got to show those. If they don't show
9 those, then you still can't even consider the death penalty.
10 Do you understand what I'm saying? Under the law. Okay, if
11 they do show those, then we have an opportunity, if we want
12 to, we don't have to do anything. But we have an opportunity
13 if we want to, to show what they call mitigating
14 circumstances, reasons why the death penalty should not be
15 imposed. Do you understand what I'm saying?

16 A. I understand. I do.

17 Q. Okay. If the aggravating circumstances don't
18 outweigh, if they are not greater than the mitigating
19 circumstances, then you still can't consider the death
20 penalty. Do you understand what I'm saying?

21 A. Yeah, I understand.

22 Q. So this is the law trying to deal with these
23 different beliefs, bring them together into a community, and
24 giving everybody a chance to chip in. Do you see what I'm
25 saying?

26 A. Yes.

27 Q. Okay. Now if they can jump that hurdle, then I
28 believe, then you are in a position where you can consider
29 the death penalty. Do you understand what I'm saying?

1 A. I understand.

2 Q. Okay. And only one person can decide that the
3 death penalty is warranted in a case where you sit as a
4 jury. Okay, if you are in a case where you sit as a juror,
5 there is only one person that can decide that the death
6 penalty should be given in this case. Do you understand what
7 I'm saying?

8 A. (Juror Ms. Green nods her head.)

9 Q. Under the law if you get to that point, then the
10 law says you have to be able to consider the options. One is
11 death; one is life. But only one person can decide that it
12 has to be death, that the circumstances warrant death. The
13 Judge will never instruct you, nor nobody else can instruct
14 you that you have to give a death penalty. Do you understand
15 what I'm saying?

16 **BY THE COURT:** And you're right except that
17 she-- it must be after consulting, consultation
18 with her fellow jurors.

19 **BY MR. LUMUMBA:** Right. Right. Right.

20 Q. Do you understand what I'm saying?

21 A. I understand.

22 Q. Okay, so the question is, is that the juror
23 themselves must decide after consultation - that's what the
24 Judge was saying - the jurors themselves must after
25 consultation with their other people that they are going to
26 have on the jury, that juror has to make an individual
27 decision that the death penalty is warranted. Do you
28 understand what I'm saying?

29 A. Yeah, I do.

1 Q. Okay. So and Ms. Green, what I'm asking you, you
2 know, understanding that that is the process, and you know,
3 that is the process we have, you know, I am asking you that
4 if you understand that the law is trying to protect people,
5 just like I am sure you are trying to protect people from
6 loss of life, you know, and all of us do; right? That can
7 you under that circumstance follow the instructions that the
8 Judge gives you and consider the options if you ever jump
9 those hurdles and come to that where he says you can consider
10 this? Do you understand what I'm saying?

11 A. I don't want to.

12 Q. Well, okay, I know you don't want to, and I
13 understand that. But I guess the reason that we ask jurors
14 to come out is because we need people who will make some
15 sacrifices, you know, if under the circumstances or else
16 people won't have the benefit of a community of jurors. Do
17 you understand what I'm saying?

18 A. I understand.

19 Q. They will be denied certain jurors; right? And I'm
20 not trying to tell you to change your religious beliefs. I'm
21 not trying to tell you to change any beliefs. The only
22 question I'm asking-- and could you hold on one second? Just
23 one second.

24 (Pause while Mr. Lumumba gets a document.)

25 Q. Okay, you didn't get a chance to finish filling out
26 your whole questionnaire; is that right?

27 A. No.

28 Q. Okay, but the only thing that I am just asking you,
29 can you follow the law? Can you, if the Judge gets to-- if

1 the Judge gives you the instructions and you have got to, of
2 course, follow-- there has to be a trial. In any case you
3 are involved in there has to be a guilty finding. Then you
4 have got to talk about those hurdles. Do you understand what
5 I'm saying?

6 A. Uh-hum.

7 Q. If you get to a point where the Judge says you can
8 consider it, can you consider both life and death? That is
9 the first question.

10 A. And that's what I said. No.

11 Q. Okay. Thank you, Ms. Brown.

12 BY MR. LUMUMBA: I have no further questions.

13 BY THE COURT: Ms. Green, you can go out, Ms.
14 Green. And I would ask you, don't discuss what we
15 have discussed in here out there. Okay?

16 BY JUROR MS. GREEN: Okay.

17 BY THE COURT: Thank you, ma'am. Okay. Now
18 let me ask you-- well, just a second.

19 (Pause while Ms. Green leaves the courtroom.)

20 BY MR. EVANS: Are you going to go ahead and
21 do the cause ones on the ones we are doing
22 individual on and take them out of the panel or?

23 BY THE COURT: Yeah. I'm going to go through
24 them all, and then we will do it. Number 4, Ms.
25 Necaise. Wait just a minute, Ron. Number 4, Ms.
26 Necaise, in addition to saying that she would
27 oppose the death penalty, she said on religious or
28 philosophical grounds she could not decide this
29 case one way or another, and she couldn't make a

1 decision. Is there any necessity in individualizing
2 her?

3 BY MR. LUMUMBA: This is number 4?

4 BY THE COURT: Four.

5 BY MR. LUMUMBA: Diane Necaise. Yes, Judge.
6 I would like to.

7 BY THE COURT: Okay. Number 4, Ms. Necaise.

8 (JUROR NUMBER 4, MS. DIANE NECAISE enters the
9 courtroom.)

10 BY THE COURT: Ms. Necaise, if you would have
11 a seat up here, please.

12 BY JUROR MS. NECAISE: Oh, right there?

13 BY THE COURT: Yes, ma'am.

14 INDIVIDUAL VOIR DIRE BY MR. EVANS: (Of Ms. Diane Necaise).

15 Q. How are you doing, Ms. Necaise?

16 A. Doing fine.

17 Q. What the Judge is doing now, he is doing some
18 individual voir dire on some jurors that answered certain
19 questions on the death penalty, and that's why you are in
20 here.

21 A. Yes, sir.

22 Q. It's not that you are being singled out or
23 anything.

24 A. Oh, I didn't think so.

25 Q. But as far as the death penalty, let me make sure
26 that I understand what you are saying. First, you understand
27 that the law in this case is that there would be a two phase
28 trial on the death penalty. The first phase would strictly
29 be guilt or innocence, and in the second phase you would be

1 asked to consider two different penalties. One of those
2 would be the death penalty.

3 BY MR. LUMUMBA: Judge, I have a slight
4 objection. There is no law that there will be two
5 phases. There is a law that there could be.

6 BY THE COURT: Okay. Well, there could be.
7 There won't be any death penalty consideration at
8 all if the jury finds him not guilty. You
9 understand that, Ms. Necaise?

10 BY JUROR MS. NECAISE: Uh-hum.

11 BY MR. EVANS: I hope she does.

12 BY MR. EVANS:

13 Q. When we go through the first phase, if the jury
14 finds him guilty, we automatically go into a second phase.
15 In that phase, you will be asked to consider a couple of
16 different penalties. One of those penalties will be the
17 death penalty. The death penalty in this particular type of
18 case because of the crime is a penalty the jury can be asked
19 to consider. But before it can get to that point, the Judge
20 has to advise the jury of what law applies in the case, and
21 the jury looks at the evidence and makes a decision of what
22 penalty is proper because of the facts in the case and
23 because of the law that the Judge gives. What I understand
24 that you have said is because of your beliefs, you cannot
25 consider the death penalty as a possible penalty even because
26 of your beliefs. Is that correct?

27 A. Yes, sir.

28 Q. And this case or any other case, you could not
29 consider, even consider the death penalty as a possible

1 penalty because of those beliefs; is that right?

2 A. I just don't think I could.

3 Q. All right.

4 A. And as you were saying while ago, you wouldn't want
5 to go through the whole process and then have somebody that
6 just couldn't, couldn't do it.

7 Q. Right, and if we get to that point, the Judge will
8 tell you in the instructions whether or not you can consider
9 the death penalty. But basically, what you are telling the
10 Court is that regardless of what law the Judge gave you, you
11 could not consider the death penalty as a possible
12 punishment?

13 A. That is true.

14 Q. Okay, and also I believe you also stated that you
15 had personal or religious beliefs that would keep you from
16 even judging someone else regardless of the penalty; is that
17 right?

18 A. Yes, sir. I did say that.

19 BY MR. EVANS: Thank you.

20 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Ms. Diane Necaise).

21 Q. Good afternoon.

22 A. Hi.

23 Q. How are you doing? And I'm going to ask a few
24 questions, and I'm going to try to make them short.

25 A. Okay.

26 Q. Is it Necaise?

27 A. Yes, sir.

28 Q. And Ms. Necaise, my name is Lumumba, and probably
29 as many people mispronounce my name as mispronounce your

1 name; right?

2 A. That happens, yeah.

3 Q. Okay, but let me say this. This is where we are at
4 here. I just read your questionnaire, and I noticed in the
5 questionnaire on question number 38 that they were asking you
6 about your opinion on the death penalty, and you said no
7 opinion; right? And at the time that you filled out the
8 questionnaire, you also said that "To have an opinion on the
9 death penalty, I would have to know the circumstances of the
10 person on trial." Okay, that was what you expressed at the
11 time?

12 A. Uh-hum.

13 Q. Okay, boom. Here you are in trial. I mean here
14 you are at a voir dire. This heavy weight falls; right?
15 Boom. You know, death penalty, can you do it? Right? And
16 once that is asked to you in that way, then I see that you
17 have expressed an opinion which is slightly different than
18 the one here, and it's nothing wrong with that. I am not
19 criticizing that, but I'm going to ask a few other questions
20 to see because you are obviously thinking about this; is that
21 right?

22 A. (Juror Ms. Necaise nods her head.)

23 Q. This is something you have to say yes or no, or she
24 can't get it down.

25 A. Oh, I have to-- I'm sorry. I forget. Yes, I am
26 thinking about this.

27 Q. You are thinking, and really some of the thinking
28 has been going on since you have been in this courtroom;
29 right?

1 A. True. True.

2 Q. So you know, just out of caution that the thinking
3 is not just a hasty response to the heavy weight of the
4 possibility of the death penalty, I am asking these questions
5 to see if the thought process has considered all the options.
6 Do you see what I'm saying?

7 A. (No response.)

8 Q. Do you understand my question or maybe not, huh?

9 A. (No response.)

10 Q. I'm just laying out the basis of my questions.
11 Okay?

12 A. Well, when I did answer that, yes, it does, the
13 circumstances. But when I'm here and I'm really thinking
14 about it, it is just like no, I just can't do it.

15 Q. Okay, well, let me tell you this. Let me ask you
16 this. You understand, of course, that you haven't heard any
17 circumstances yet?

18 A. True. True.

19 Q. Okay, you understand, of course, that this is a man
20 who has pled not guilty to this crime?

21 A. Yes, I do.

22 Q. And you understand that it is our position as a
23 defense that you will never get there in this case because
24 there will never be a conviction?

25 A. I understand that, yeah.

26 Q. Okay. But setting that aside, let's assume where
27 in any case where the death penalty is a question - do you
28 understand what I'm saying? - and that's where we really are
29 when we ask these questions because the Judge has told you to

1 presume the man innocent; right?

2 A. Uh-hum.

3 Q. So what he is really asking you when he asks you
4 about death penalty questions is what can you really do in
5 any death penalty case; right?

6 A. (No audible response.)

7 Q. So understanding that Ms. Necaise, the law has in
8 it certain rules, and what the Judge is really asking is can
9 you follow the rules. Do you understand what I'm saying?
10 And he has got to ask these questions because it is important
11 that jurors do follow the rules, okay. And if you could, it
12 would be true that you would give Mr.-- you would give any
13 defendant a presumption of innocence. Is that correct?

14 A. Yes.

15 Q. Okay. And the law is saying that you can't even
16 think about a death penalty until the first part of the trial
17 is over. Do you understand what I'm saying?

18 A. Uh-hum.

19 Q. And you would be willing to follow that; right?
20 Not to even think about it until the first part of the trial
21 is over?

22 A. Well, I think you are going to think about it,
23 aren't you?

24 Q. Well, I know that is human nature, and I think that
25 is an honest response. It's human nature that it's in the
26 back of your mind; right?

27 A. Uh-hum.

28 Q. But I guess what the law is asking you is that even
29 though you have to be asked these questions at this time, can

1 you lay it aside when you hear the evidence because we don't
2 want the question of a death penalty prejudicing a man's
3 right because anybody has a right to be found not guilty if
4 they are not guilty; right?

5 A. True.

6 Q. Okay. And if the evidence doesn't prove them
7 guilty; is that right? Would that be true?

8 A. True.

9 Q. Okay, so what I'm saying would you be willing to,
10 if you were to sit on a jury, to lay aside a question of a
11 death penalty, I think as the law asks you to do, long enough
12 to concentrate on the evidence to see if there is guilt or
13 innocence, you know, to keep your mind clear on that
14 question? Would you be willing to do that?

15 A. The way I understand it though is that it is going
16 to come around sooner or later if--

17 Q. It doesn't come around sooner or later
18 necessarily. It only-- in fact, the presumption of innocence
19 is with the man now. So the presumption is it will never
20 come. Do you understand what I'm saying?

21 A. Well, I understand that.

22 BY MR. EVANS: Your Honor, I object. That is
23 not correct.

24 BY MR. LUMUMBA: That is absolutely--

25 BY MR. EVANS: --There is a presumption of
26 innocence at this point, and that is all. We have
27 not gotten to the death penalty. There is no
28 presumption there.

29 BY THE COURT: Here is where we have got to

1 get back with Ms. Necaise. Now with the others it
2 may be different. Ms. Necaise has said she can't,
3 has a philosophy that keeps her from making the
4 first decision, so you never get to the second
5 decision.

6 BY MR. LUMUMBA: Okay.

7 BY THE COURT: So you are going to have to get
8 her past that first one before we can talk about
9 the second one.

10 BY MR. LUMUMBA: Okay.

11 BY MR. LUMUMBA:

12 Q. Ms. Necaise.

13 A. Uh-huh.

14 Q. Are you able to -- let's forget about the death
15 penalty - that's what the Judge is saying - right now. Are
16 you able to sit in the trial or any trial and -- did you tell
17 me you served on a jury before?

18 A. No.

19 Q. Okay, never have?

20 A. No.

21 Q. Okay. Would you be willing and would you be able
22 to sit in a trial and make a judgment on whether the
23 evidence, the prosecution has proven its case as to whether
24 there is innocence or guilt in a particular case? Would you
25 be willing to do that?

26 A. I could do that.

27 Q. Okay, okay.

28 A. I just can't, I just don't want to take--

29 Q. --Okay, that is the question. That is the first--

1 **BY THE COURT:** Let her finish her answer so I
2 can hear all of it.

3 BY MR. LUMUMBA: Go ahead; I'm sorry.

4 **BY THE COURT:** What was the rest of your
5 answer?

6 A. Well, I could do the first part of it, but when you
7 are-- if there was a second part to it, that is the part that
8 I am having trouble with. Just sitting here listening to
9 everyone and then I am thinking, I just don't think.

10 Q. Right. And you are, and that is true. You are
11 sitting here and listening, but you really haven't heard from
12 everyone. This is the first time I have asked you any
13 questions; right?

14 A. Well, true.

15 Q. All right, so you haven't heard from everyone. You
16 have heard-- and so each one of us asks the question with a
17 little bit different perspective. Do you understand what I'm
18 saying?

19 A. Uh-hum.

20 Q. So but anyway, what I'm saying is this, or what I'm
21 asking you is this. Understanding that it's the second part
22 that you are having trouble with; right?

23 A. (Juror Ms. Necaise nods her head.)

24 Q. And understanding also that when you wrote your
25 questionnaire, you said that your opinion or your belief was
26 at that time that you really didn't have a position on the
27 death penalty other than it would depend on the
28 circumstances. Isn't that true?

29 A. And-- that is true.

1 Q. Okay, well--

2 A. But being here and being confronted with it, that
3 is when I'm saying that I would really have very difficult
4 time saying that somebody deserved the death penalty.

5 Q. All right. Even if you understood that the law was
6 telling you that first of all, you don't have to consider a
7 death penalty even if a person is found guilty. You cannot
8 consider the death penalty unless the prosecution first
9 proves to you circumstance which warrant it. In other words,
10 they would have to prove to you that under the law that there
11 were aggravated circumstances which warranted the death
12 penalty before you could begin to think about it. Do you
13 understand that?

14 A. I understand that.

15 Q. Okay, secondly, even if they did that, you still
16 couldn't consider if the Defense was able to show you
17 mitigating factors which outweighed the aggravating factors.
18 Do you understand what I'm saying?

19 A. (Juror Ms. Necaise nods her head.)

20 Q. So those are at least two hurdles the prosecution
21 has still got to jump; right?

22 A. Uh-hum.

23 Q. Really three because first of all, you have got to
24 prove somebody guilty, and then once they get in the death
25 penalty phase, they have got to prove aggravating
26 circumstances, and then they have got to prove that the
27 aggravating circumstances outweigh the mitigating factors;
28 right?

29 BY MR. EVANS: No, sir. That is not the law.

1 BY MR. LUMUMBA: That is the law.

2 BY MR. EVANS: No, sir. The law is that the
3 defense puts on mitigating, and the law is if the
4 jury finds there are aggravators, that unless they
5 find that the mitigating factors outweigh the
6 aggravating factors, they can impose the death
7 penalty.

8 BY THE COURT: That is correct. That's what
9 the law is.

10 BY MR. LUMUMBA: Okay.

11 BY MR. LUMUMBA:

12 Q. Basically, what the law is going to tell you is
13 that, according to what the Judge just indicated, is that the
14 mitigating, if the mitigating factors outweigh the
15 aggravating factors, then you still can't consider the death
16 penalty. Do you understand what I'm saying?

17 A. (No response.)

18 Q. Okay, you can't even consider it. No one ever
19 tells you as a juror or the group of jurors, say they jump
20 all these hurdles. No one is still going to tell you that at
21 this point you have got to give a death penalty. Do you
22 understand what I'm saying? The final decision is always
23 left to the jurors, and it is left to each individual juror
24 as they consult with the other jurors. Do you understand
25 what I'm saying?

26 A. Yes.

27 BY THE COURT: Answer out.

28 A. Yes.

29 Q. Okay, yeah. And so if they jump three hurdles, all

1 those hurdles we just talked about, then they are in a
2 situation where that the law will say, you should-- at that
3 point you are free to consider the options. Okay, and the
4 options are two. There is life, and then there is death.
5 All right, okay, as far as the death penalty is concerned,
6 and the question becomes then at that time can you, because
7 you are the only one that can decide that the case warrants a
8 death penalty; right?

9 A. (No audible response.)

10 Q. Okay. Can you consider the options? That's what
11 it says, if they ever even get to that point?

12 A. I thought that is what I was saying, that I didn't
13 want to consider the death penalty. Is that what you're
14 asking me?

15 Q. Yeah, I am asking you, yeah, but you were saying
16 it, but did you know that they had to prove aggravating
17 circumstances? Did you know that?

18 A. I'm sorry?

19 Q. Did you know that they had to prove aggravating
20 circumstances? Did you know that before we had this
21 discussion here?

22 A. I'm not sure if I am following--

23 Q. I said did you know that once we got in the death
24 penalty phase, if it ever happened in any case, that the
25 prosecution still has to prove things in that phase? Were
26 you aware of that?

27 A. Well, I know they would have to prove whether he
28 is, whether he is guilty or not.

29 Q. Right, but that is not all they have got to prove

1 in order to get the death penalty. Do you understand that?

2 A. Well, all I'm saying is, is that I'm having a hard
3 time wanting to give anybody the death penalty.

4 Q. Okay, well, you are not required to want to give
5 anybody the death penalty.

6 A. Well, I am just-- the question was asked did I have
7 a hard time with the death penalty, and I do.

8 Q. Okay, you have a hard time with it. The question
9 becomes--

10 A. --and no, I can't give it to him. I can't give
11 it. I just can't do it.

12 Q. And even though your opinion at the time was it
13 depended upon the circumstances?

14 A. That is true. It is. I did say that, but once I
15 am here, I just feel that I can't give someone the death
16 penalty.

17 Q. Okay. Thank you.

18 BY MR. LUMUMBA: I have no further questions.

19 BY THE COURT: Okay. Thank you, Ms. Necaise.
20 You can step back out. Number 5, Ms. Yarbrough.

21 (JUROR NUMBER 5, MS. LINDA YARBROUGH, enters
22 the courtroom.)

23 BY THE COURT: Right there; yes, ma'am. Ms.
24 Yarbrough, you know I have asked you some questions
25 concerning the death penalty. Both of these
26 attorneys are going to want to ask you some also.

27 INDIVIDUAL VOIR DIRE BY MR. EVANS: (Ms. Linda Yarbrough).

28 Q. Hi, Ms. Yarbrough, how are you doing?

29 A. Okay. A little nervous, but all right.

1 Q. Well, don't be nervous because all we are going to
2 do is just ask you a few questions.

3 A. Okay.

4 Q. All this is is just a little follow up on what we
5 had asked earlier, and some of the stuff the Judge didn't
6 want us to ask it in front of the other jurors, things that,
7 you know, don't want to influence any other jurors by
8 different comments that might come out. Now this part, what
9 we are going to ask you about is just on the death penalty.

10 A. All right.

11 Q. Now you understand that in a capital murder case it
12 is a two phase trial. The first part will just be deciding
13 guilt or innocence of the Defendant. If the jury finds the
14 Defendant guilty, then we go into what is called the second
15 phase where the jury considers what penalty is appropriate.
16 That would be either a life sentence or the death penalty.
17 Do you understand that part?

18 A. Okay.

19 Q. Once we get to that part, we are going to put on
20 evidence to show you what the penalty should be. It's our
21 opinion in this case that the facts are there to justify a
22 guilty verdict, and we will go into the second phase. Once
23 we get to that second phase and we put on our proof, the
24 Judge is going to read you what is called instructions of
25 law. Those instructions tell you step by step what the jury
26 has to do. The first phase of those instructions say that we
27 have to prove to you certify elements. In those elements one
28 is the jury must find that the Defendant killed, intended to
29 kill, or certain factors like that.

1 That step has to be done first. If the jury finds
2 that that step has been met, then we go on into the second
3 step of the instructions. The jury would do this in
4 deliberations. In that second step of instructions the next
5 thing that the jury must determine are what is called the
6 aggravating factors, and basically all that means is the bad
7 things. There are certain factors that will be listed in the
8 instruction, and the Judge is going to ask y'all when you go
9 back in and deliberate, will you look and see if you find
10 that these are there.

11 If the jury determines that the aggravating factors
12 are present, then it goes on to the next phase of
13 instructions. And the next phase of instructions the Judge
14 will read you a group of what is called mitigating factors.
15 That is certain good things that you may possibly find in
16 favor of the Defendant. If the jury finds that any of those
17 mitigating factors are there, the Judge in the instructions
18 will tell the jury that if you find the aggravating factors
19 are present, the bad things, and that the mitigating or good
20 things don't outweigh the aggravating factors, then the jury
21 can consider the death penalty.

22 At that point the jury would have to decide still
23 is the death penalty appropriate or life. And what we are
24 asking you, and I'm trying to go through all this to get to a
25 simple question. What I understand your answer was earlier,
26 it was because of your beliefs that you could not consider
27 the death penalty as a possible punishment on any case. Is
28 that correct?

29 A. Not on any case, no. I guess after hearing or

1 seeing the evidence, I could honestly, I would still have in
2 me thinking that I am responsible for somebody else's life,
3 and that is going to be hard on me to deal with later on.

4 Q. And that point you will be. And that is why it is
5 so important that we know whether or not you can consider
6 that as a possible penalty because that is what the Court
7 needs to know. When you go back in there at that level, can
8 you consider the death penalty as one of the two options that
9 you might give?

10 A. One of the two.

11 Q. One of the two. Or are you telling the Court that
12 I can't even consider that as a possible penalty?

13 A. I could consider it one of the two.

14 Q. Okay.

15 A. I couldn't go back and just say death penalty, no.

16 Q. All right. Could you consider the death penalty?
17 Are you telling us that under the right set of facts, in this
18 case if we proved our case to you that this Defendant was
19 guilty and we showed you the facts of this case and the Judge
20 told you that in this particular case the death penalty was
21 an appropriate penalty, are you telling me that you--

22 BY THE COURT: --Now wait a minute-- is a
23 possible penalty. I'm not going to tell her it's
24 an appropriate penalty one way or another.

25 BY MR. EVANS: Okay.

26 Q. If the Court tells you that this is a possible
27 penalty in this case, are you telling us that you could go
28 back there and consider whether or not he should get the
29 death penalty for this crime? Or are you telling us that you

1 would completely rule out the death penalty and just
2 automatically go to some other penalty?

3 A. (No response.)

4 Q. I know it's a tough question.

5 A. It is very tough. (Pause) I would go to some other
6 penalty.

7 Q. So you would not even consider the death penalty?

8 A. No, I'm not saying I-- you are trying to confuse
9 me.

10 Q. No, ma'am; I am not. All of this is kind of
11 confusing on all of us, but we are trying to get down to some
12 definite answers. Basically what I'm asking you, is your
13 belief of the death penalty such that if you were picked, and
14 you were back there on the second phase where the death
15 penalty was being considered, that you would not even
16 consider the death penalty? You would just automatically--

17 A. --No, sir--

18 Q. --go with a life sentence?

19 A. No, sir.

20 Q. Then you are telling us you could consider the
21 death penalty--

22 A. --I could consider it, yes.

23 Q. And if the facts justified it and the law in this
24 case authorized it, you could give the death penalty if you
25 felt it was appropriate?

26 A. I could consider it, yes.

27 BY MR. EVANS: Okay, thank you.

28 BY MR. LUMUMBA: I just have a couple of real
29 short questions.

1 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Ms. Linda Yarbrough.)

2 Q. I just want to a quick-- Ms., uh.

3 A. Yarbrough.

4 Q. Yarbrough, I'm sorry.

5 A. That's okay.

6 Q. The only thing I wanted to say is this, just remind
7 you of this. You understand that even though we are doing
8 all this talking about the death penalty, there is nobody
9 been found guilty here? You understand that--

10 A. Right.

11 Q. Okay, and sometimes people might lose a little
12 focus, and, you know, the Judge is doing what is necessary
13 under the law in terms of asking these questions, and you
14 know, all of this. But the focus is on whether or not the
15 prosecution can prove its case even to get there. Do you
16 understand what I'm saying?

17 A. Yes, sir.

18 Q. There is no assumption here that anybody is ever
19 going to get to that in this case. Do you understand what
20 I'm saying?

21 A. Yes, sir.

22 Q. Okay, and you have already spoken your mind as it
23 relates to what you could do. Is that correct?

24 A. Yes, sir.

25 BY MR. LUMUMBA: Okay, I have no further
26 questions.

27 BY THE COURT: Okay, Ms. Yarbrough, thank
28 you. You can step out please, ma'am. Number 15.

29 (Ms. Linda Yarbrough left the courtroom, and

1 JUROR NUMBER 15, JAMES M. OVERSTREET entered the
2 courtroom.)

3 BY THE COURT: Mr. Overstreet, the lawyers
4 have some follow up questions they want to ask you
5 about the death penalty.

6 INDIVIDUAL VOIR DIRE BY MR. EVANS: (Mr. James Overstreet).

7 Q. How are you doing, Mr. Overstreet?

8 A. All right.

9 Q. This will just be a few questions. We will be
10 through. On your opinion of the death penalty, you had made
11 a comment while you were out with the panel that you had a
12 problem with it. I want to follow up just a little bit on
13 that. Of course, you understand that this is a capital
14 murder case?

15 A. (Juror Mr. Overstreet nods his head.)

16 Q. And in this case it is possible that at some point
17 the jury may have to consider the death penalty. But to get
18 to that point we have got to overcome several hurdles. The
19 first hurdle would be that there will be a-- the first phase
20 of the trial where the jury would decide strictly on the
21 guilt or innocence of the Defendant. We believe that at this
22 point the evidence is going to be there where the jury is
23 going to convict, and we are going to go into a second
24 phase.

25 Once we get into that second phase, there is a long
26 jury instructions that the Judge is going to give. That jury
27 instruction is going to tell the jury step by step what to
28 do. There are certain steps that must be done, certain
29 things that the jury must find to go forward. One is the

1 jury has got to determine that this Defendant killed or
2 intended to kill the victim that is involved in the case.

3 If the jury finds that that is there, then we will
4 go into the next part, and the jury determines at that point
5 whether or not certain aggravating factors are present. Now
6 the Court is going to instruct the jury what those
7 aggravating factors are, and the jury is going to determine
8 whether or not they are present in this case. If they are
9 present in this case, then the Judge is going to tell the
10 jury that there are certain mitigating factors that the jury
11 may consider.

12 Now those factors will be laid out in the
13 instructions, and the Court is going to tell the jury in the
14 instructions if the jury finds that the aggravating
15 circumstances are present, unless the mitigating
16 circumstances or the good things outweigh the aggravating
17 circumstances, that the jury can consider the death penalty
18 as a possible penalty.

19 To try to sum it up, basically the main question
20 that we need to know the answer to, if you are picked as a
21 juror in this case and if you are asked in the second phase
22 to consider the death penalty, will you be able to consider
23 the death penalty as a possible penalty?

24 A. Yes, I would.

25 Q. Okay. And you would be able to listen to the
26 evidence and base your decision of whether the death penalty
27 was appropriate based upon the facts of the case and the law
28 that the Judge gives you?

29 A. I think I understand what you are saying, yes.

1 BY MR. EVANS: Okay, thank you, sir.

2 BY MR. LUMUMBA: Very briefly, Judge.

3 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Juror Mr. James M.
4 Overstreet).

5 Q. Good afternoon, Mr. Overstreet.

6 A. Good afternoon.

7 Q. Mr. Overstreet, once again, I am Chokwe Lumumba,
8 and I am representing Mr. Flowers along with my partner, Mr.
9 Freelon. The only thing I have, understanding your responses
10 at this point, the only thing that I would like to say or to
11 ask you is this: Is that you understand that these questions
12 are only being asked because this is what is called a capital
13 murder case? Do you understand what I'm saying? That's what
14 the charges are.

15 A. (Juror Mr. Overstreet nods his head.)

16 Q. You have to say yes or no, or she won't be able to
17 get it down.

18 A. Yes.

19 Q. Okay, and the only other thing is that you
20 understand that Mr. Flowers there is presumed to be
21 innocent. There is no, there is nothing about this
22 discussion which suggests in any way that there is any
23 guilt. Do you understand that?

24 A. Right. Yes.

25 Q. So the questions as they are being asked are really
26 projected to you as to any case, as a capital murder case as
27 opposed to any assumption that this case will ever get to
28 that point. Okay. Do you agree with that?

29 A. I understand. I understand that.

1 Q. And the only reason I have asked all that is to say
2 are you still fully prepared after being hit with these
3 barrage of questions to sit and require the prosecution to
4 prove beyond a reasonable doubt that this man is guilty of
5 something?

6 A. Yes. Yes.

7 Q. And you understand he has pled not guilty, and we
8 submit - I don't think it is proper for me to say we believe
9 - but we submit that that will never happen. Do you
10 understand that?

11 A. Yes.

12 Q. Okay, and so you are fully open minded as far as
13 the evidence?

14 A. Right. Yes.

15 Q. Okay, that was my question.

16 **BY THE COURT:** Let me make sure I understood
17 you, Mr. Overstreet. You said you would wait and
18 let them present the evidence, and after they
19 presented the evidence, that you would be able to
20 consider the death penalty based on the evidence
21 and the instructions on the law that I gave you.
22 Is that what you are telling me?

23 **BY JUROR MR. OVERSTREET:** Yes, I would.

24 **BY THE COURT:** Thank you, Mr. Overstreet. You
25 may step outside.

26 (Juror Mr. Overstreet left the courtroom.)

27 **BY THE COURT:** Ms. Weiss, number 18.

28 (JUROR RAYANNE M. WEISS, Number 18, entered
29 the courtroom.)

1 **BY THE COURT:** Ms. Weiss, if you would come
2 have a seat up here, please, ma'am. The lawyers
3 are going to ask you some follow up questions
4 concerning the death penalty.

5 INDIVIDUAL VOIR DIRE BY MR. EVANS: (Juror Ms. Rayanne Weiss.)

6 Q. How are you doing, Ms. Weiss?

7 A. Fine. Thank you.

8 Q. All right. I'm going to try to be brief and just
9 ask you a few questions. The main thing that we are trying
10 to get to is how you feel about the death penalty. And if I
11 understand what you are saying earlier, you are really not
12 sure; is that right?

13 A. Well, I believe in the death penalty, but I am
14 unsure whether I personally with my conscience could vote to
15 have someone put to death.

16 Q. Of course, you realize at this point you are one of
17 the ones that is going to be in the possible jury seat, not
18 someone outside looking at the case?

19 A. Right.

20 Q. So you would be the one that would have to decide
21 whether you could consider it or not. Now what we are
22 looking at, the death penalty will be a two phase trial. We
23 submit that we are going to go through the first part of the
24 trial. In that part the jury will determine guilt or
25 innocence. If we prove our case beyond a reasonable doubt,
26 then the jury should vote guilty in this case. If we don't,
27 they should vote not guilty. But that gets us past the first
28 part. Once we have proven our case beyond a reasonable doubt
29 and we go on to the second phase, then the jury is going to

1 have instructions that the Judge gives them to consider, and
2 they are going to have facts that we put on in front of the
3 jury.

4 At that point you will be asked to consider what
5 penalty is appropriate, and basically what I need to know at
6 this point can you consider the death penalty?

7 A. I would listen, but it is like I said when the
8 Judge was talking, if I were pushed, I am really uncertain
9 because I think that it is wrong to kill. I understand and I
10 am glad that we have the death penalty, but I personally
11 think that the death penalty is also a form of killing too.
12 And so I know you don't want to hear that.

13 Q. Well, no, everybody has their--

14 A. --but I would listen and I really, you know, don't
15 know. I mean my tendency now would be to say no, I probably
16 wouldn't. But I don't know what the facts are, but I would
17 listen.

18 Q. What you are telling us is you do not believe
19 that--

20 A. --that I personally, it's a personal thing. It's
21 not -- I'm glad that it exists in society because I think we
22 need it.

23 Q. But because of your personal beliefs, you don't
24 think that it would be right to give somebody the death
25 penalty because you think that is just a form of killing?

26 A. Right.

27 Q. So we get back to the other question. If you're
28 back in there at that point, are your beliefs against the
29 death penalty such that you could not consider the death

1 theory and practice. Right; I understand that. I
2 understand. But I guess also the question becomes is that
3 it's not easy to do these things for anybody; isn't that
4 right?

5 A. That's correct.

6 Q. Okay, and I'm not going to belabor the question. I
7 guess the question just comes understanding it's not easy to
8 do so, understanding that I really believe that you believe,
9 like the Judge has said, in the presumption of innocence, and
10 you are going to abide by that; correct?

11 A. Yes, sir.

12 Q. Which means that you don't even have to get to the
13 consideration of that unless there is proof of guilt. Do you
14 understand what I'm saying?

15 A. That's correct.

16 Q. I understand that we submit that he is not guilty
17 and it's not going to happen. Do you understand?

18 A. Yes, sir. You are the defense.

19 Q. Pardon?

20 A. I said, yes, sir; you are the defense. I
21 understand that.

22 Q. Of course. That's our view. And you understand we
23 really as we stand here, don't have to really prove anything;
24 right?

25 A. Correct.

26 Q. Okay, but then understanding also that the law
27 shows a certain respect for life even in the death penalty
28 phase, in other words, the law requires, you know, some of
29 the things counsel -- you know, they have got to come in and

1 show some reason why it is legally sufficient that the death
2 penalty can even be considered; right?

3 A. Right.

4 Q. And then there is a possibility that the defense,
5 if it wants to, can come up with legally sufficient, come up
6 with reasons which the jury can determine outweigh the
7 reasons for the death penalty and come up with reasons that
8 the jury might say well, that is outweighed by this reasons
9 for life. Do you understand what I'm saying?

10 A. Yes, sir.

11 Q. And then even if you get beyond all that, it's just
12 a question of whether you can consider the death penalty.
13 And, you know, if you consider it, you have to be able to say
14 I can consider it, and if I find in my mind with my fellow
15 jurors discussing with them, if I come out and then make an
16 individual decision after I discuss it with them that the
17 death penalty should be imposed, I am able to do it. So the
18 question is just to you, I guess the same question we started
19 with. Can you do it?

20 A. And I am uncertain.

21 Q. You are still--

22 A. I would consider it, but I am uncertain about what
23 I would do.

24 Q. Okay, but in any event, if you did sit on this
25 jury, you would certainly abide by the presumption of
26 innocence. Is that correct?

27 A. Yes, sir.

28 BY MR. LUMUMBA: Okay, thank you.

29 BY THE COURT: Thank you, Ms. Weiss. You may

1 step out.

2 (Juror Ms. Rayanne M. Weiss left the
3 courtroom.)

4 **BY THE COURT:** Number 23, Ms. McClelland.

5 (JUROR NUMBER 23, MS. LUCILLE W. MCCLELLAND
6 entered the courtroom.)

7 **BY THE COURT:** Ms. McClelland, if you will
8 have a seat up here, please.

9 (Both Counsel approached the bench.)

10 **BY MR. LUMUMBA:** I don't have a
11 questionnaire. I don't know whether there was one
12 produced or not. A questionnaire on her.

13 **BY THE COURT:** I can ask her.

14 **BY MR. EVANS:** Yeah, I have got a copy.

15 **BY MR. LUMUMBA:** Okay, I just wanted to know.

16 **BY THE COURT:** I don't know but I can--

17 **BY MR. LUMUMBA:** Can I use your copy when you
18 get finished?

19 **BY THE COURT:** The clerk--

20 **BY MR. EVANS:** --Do you want to take a short
21 break before so you can get a copy?

22 **BY THE COURT:** Do you want that before you
23 voir dire?

24 **BY MR. LUMUMBA:** Yes. Let us look for it. We
25 might have just misplaced it. She can go ahead.

26 **END BENCH CONFERENCE.**

27 **BY THE COURT:** Okay. Ms. McClelland, they
28 want to ask you some follow up questions concerning
29 the death penalty.

1 INDIVIDUAL VOIR DIRE BY MR. EVANS: (Ms. Lucille W.
2 McClelland.)

3 Q. How are you doing?

4 A. Fine.

5 Q. I have just got a few questions for you. We are
6 trying to pin down different people's beliefs and opinions.
7 In this particular case I think you have basically stated
8 that you do not believe in the death penalty. Is that
9 correct?

10 A. I guess maybe I believe in the death penalty, but
11 for me to impose it, no, I couldn't do that.

12 Q. And what we are looking at, I think what you are
13 telling the Court is in no circumstances could you consider
14 the death penalty as far as you yourself giving it. Is that
15 correct?

16 A. I don't think I could, no.

17 Q. Now you understand that the trial on a capital case
18 will be in two parts?

19 A. Right.

20 Q. The first part, as I have told you and the Judge
21 has told you, the Defendant is presumed innocent.

22 A. Right.

23 Q. Once we have proven that he is guilty, then we can
24 go into the second phase. In that second phase of the trial
25 that is when the death penalty comes in. And just to sum
26 things up, I think what you're saying is that you could not
27 consider the death penalty as a possible penalty, that you
28 just do not believe in it, and you could not do it. Is that
29 correct?

1 questions.

2 BY MR. LUMUMBA:

3 Q. Ms. McClelland. First of all, you know, this is an
4 inquiry we make when there is a capital murder case; right?

5 A. Yes.

6 Q. And it doesn't have anything to do with whether or
7 not Mr. Flowers, whether there has been any proof against
8 him. You understand that?

9 A. Right. I understand that.

10 Q. So in other words, he still sits there presumed
11 innocent?

12 A. Right.

13 Q. And you are willing to abide by that if you were
14 ever to sit on the jury; is that correct?

15 A. Exactly.

16 Q. Okay. Understanding that, and understanding what
17 you're saying is that it would be - and you correct me
18 whenever I am wrong.

19 A. Okay, sure will.

20 Q. Okay, is that first of all, I don't think and I
21 don't have your form, so I don't know what you said on the
22 form, but I take it from what you're saying now, that as you
23 sit here now, you have a problem with the death penalty;
24 right?

25 A. Yes. Somewhat.

26 Q. Somewhat, okay, somewhat. And I notice you keep
27 saying, "Somewhat, "I think," and that is okay because we do
28 think and we do--

29 A. --No, I think that there may be cases of

1 circumstances where, but it would have to be really-- and
2 again, I am saying that I don't know if I could impose that
3 on someone.

4 Q. And would it be safe to say that you don't know any
5 circumstances about this case or--

6 A. --oh, absolutely not.

7 Q. --any other case right now? You don't know
8 anything?

9 A. No.

10 Q. Okay. Now I think that the law in talking about
11 the death penalty in cases takes in consideration
12 circumstances; right? Let me tell you, let me ask you if you
13 could follow these kind of instructions if they were given to
14 you. Okay, let's go along with the scenario and see if you
15 can follow. Okay, first of all, you have already said that
16 you could follow the scenario that first of all, you don't
17 convict a person unless the prosecution proves that he is
18 guilty. Is that correct?

19 A. I agree.

20 Q. And you are going to hold him to that; right?

21 A. Exactly.

22 Q. And we submit, of course, that they will never get
23 there; right? Okay, that is our position as the defense.

24 A. Yeah.

25 Q. And you will listen to our position?

26 A. Exactly.

27 Q. Okay. Secondly--

28 BY MR. EVANS: --Your Honor, I oppose about
29 her listening to their position. She is going to

1 have to decide what she listens to and what she
2 bases it on. We are getting way outside the death
3 penalty issue here.

4 **BY THE COURT:** Overruled.

5 BY MR. LUMUMBA:

6 Q. Okay. Secondly, the law says - and I'm going to
7 see if you can follow this; if the Judge winds up telling you
8 this, and I think he has, you know, already really - is that
9 even in a case where somebody might get convicted, right, of
10 a capital murder, the law, as I see it, has a certain respect
11 for life; right, because it doesn't say that you can
12 automatically give the death penalty? Even in that
13 situation, you can't even think about it just because they
14 are convicted. Do you understand what I'm saying?

15 A. Yes, I understand.

16 Q. Okay, what has to happen is that the prosecution
17 then-- if there is a second phase, they have got to come
18 through and show some proof that there is some reason, some
19 circumstances which legally justify you considering the death
20 penalty. Do you understand what I'm saying?

21 A. Right. I understand.

22 Q. Okay. Then the defense still is in a position that
23 he can come forth if he wanted to and show you some, what
24 they call circumstances which say no, there shouldn't be a
25 death penalty even in this case. Do you understand what I'm
26 saying?

27 A. Yes.

28 Q. Maybe they want to talk about the kind of person it
29 is, the kind of life, you know, whatever; okay?

1 A. Right.

2 Q. You know, but they can offer what is called
3 mitigating circumstances. That is what that means, reasons
4 for not giving death; okay?

5 A. Okay.

6 Q. So the law is showing a kind of respect for life
7 there because they-- it is saying if the aggravating
8 circumstances don't-- I mean, excuse me; if the mitigating
9 circumstances outweigh the aggravating circumstances, if they
10 are more, stronger than, then you still can't consider the
11 death penalty. Do you understand what I'm saying?

12 A. Yes.

13 Q. Okay. Only if you get over all those hurdles, and
14 that is all dealing with circumstances; right, because those
15 hurdles are based upon circumstances. What kind of
16 circumstances exist in this particular case or that
17 particular case which will allow you to go past that, you
18 know. And the Judge will never tell you what you have to,
19 have to decide. He would only tell you what the law is, and
20 then you as the jury have to decide things consistent. In
21 other words, you have got to analyze the facts and see if the
22 facts are that serious. Do you understand what I'm saying?

23 A. Yes.

24 Q. Okay, that is up to you to decide; right?

25 A. I understand.

26 Q. And then the final stage is all up to you. When I
27 say up to you, it is up to each individual juror to
28 determine-- of course, you have got to talk to each other;
29 right?

1 A. (No audible response.)

2 Q. But each individual juror has got to determine
3 whether or not in the final stage, if it gets to the final
4 stage, if it ever gets past the aggravating circumstances
5 outweigh the mitigating or if the mitigating don't outweigh
6 the aggravating as I understand, then what happens is the
7 Judge says you can consider the options, two options; right.
8 One is life and one is death. Do you understand what I'm
9 saying?

10 A. Okay.

11 Q. And only if the juror decides, nobody is going to
12 say that the death penalty is the punishment to give. The
13 only thing that can be said by the Court is that the death
14 penalty is one of two options that you can consider and that
15 under certain circumstances if you believe it should be
16 given; you know what I'm saying?

17 A. I understand.

18 Q. Because the decision still-- then you have to
19 decide to give it; right?

20 A. (No audible response.)

21 Q. The only thing that they are saying is that when
22 they ask these questions is that the law is saying well, we
23 can't have folks that come in from the beginning and say that
24 they are not even going to think about it, and they are not
25 going to consider the circumstances. Do you understand what
26 I'm saying? And consider whether in their own mind they
27 should impose the death penalty. Do you understand what I'm
28 saying?

29 A. Yes.

1 Q. So what the law is saying, can you in your mind
2 consider the circumstances and consider whether or not the
3 circumstances are serious enough for the death penalty. Do
4 you understand what I'm saying?

5 A. Yes, I understand.

6 Q. Okay, and some people might think the standard is
7 higher than other people, you know, jurors. Do you see what
8 I'm saying?

9 A. Yes.

10 Q. See, in one juror's mind it may be that they will
11 require more, and in another juror's mind they may require
12 less. But no juror can require less than what the law will
13 allow you to-- no juror can require less than what the law
14 requires for you to consider the death penalty. Do you
15 understand what I'm saying?

16 A. Yeah.

17 Q. In other words, no juror can say, Well, I'm just
18 going to automatically impose it. Every juror has to listen
19 to the circumstances and determine if the law will even allow
20 them to give it; right?

21 A. Right.

22 Q. But then no juror can say, Well, I just won't
23 consider it at all; right? If the law does allow you to
24 consider it, but then the law is up to you to make a
25 decision. And my question is merely - and I'm sorry; you
26 know, I got kind of complicated here; I was doing myself but
27 - is this: Can you because-- let me just take a peek here.
28 (Pause while Mr. Lumumba looks at Ms. McClelland's
29 questionnaire.) Well, you said exactly in your form what you

1 are saying now; right? What you said, you said, "I believe
2 that it is wrong to kill, but I also believe there may be
3 extenuating circumstances where it may be justifiable."

4 Right? That's what you said?

5 A. Right.

6 Q. So given what you said here, you are not absolutely
7 opposed. In other words, there are circumstances--

8 A. --No, I'm not completely opposed to the death
9 penalty.

10 Q. And being opposed or for it is not the standard.
11 That's not what it is.

12 A. Right.

13 Q. The question is can you follow the law, and if you
14 are given instructions, do all those steps that the Judge
15 tells you to do and then at the end make your own decision?
16 Can you do that?

17 A. I could not even consider the death penalty. That
18 would be one of the things that would be--

19 Q. --You wouldn't even be able to consider it?

20 A. No. Like I say, I believe there are times when it
21 should be applied to people, but I don't think that I could
22 be the one that--

23 Q. --that you could do it?

24 A. --could judge someone and say okay, you need to
25 die. No. I couldn't do that.

26 Q. All right. I understand it's a tough job for
27 anybody.

28 A. I know.

29 Q. Right. Yeah, I mean I am serious.

1 A. Yeah, I am serious.

2 Q. It is tough job for everybody?

3 A. I could listen and take in everything that was said
4 and consider, but again I am saying I don't think that I
5 could be the one to say okay, you need, this person need to
6 die, or this is a case where you need to-- I don't think I
7 could do that. I really don't.

8 Q. You don't think you can do it?

9 A. No, I don't think I could. I have never be in a--

10 Q. --position?

11 A. Right.

12 Q. Right. But you do think that it is good for all of
13 us to contribute to the process if our beliefs will allow us
14 to do it; right?

15 A. Oh, exactly. Yes, I believe that.

16 Q. And your beliefs will allow you to do it because
17 you believe under certain circumstances that it should
18 happen; right?

19 A. Yeah, there are circumstances that I believe that.

20 Q. And you know it's tough on anybody?

21 A. Oh, yes. Definitely so.

22 Q. Okay. So my final question is understanding that
23 it's tough on anybody and that your beliefs would allow it,
24 could you, you know, make that particular sacrifice to sit
25 and to go according to the law and, you know, consider it if
26 it gets to that? If it ever gets to that?

27 A. Well, when you put it could I consider it if it
28 gets to that, I could, yeah, think about it and consider it.
29 But, and like I say, I don't--

1 Q. --Will be true--

2 A. I have never been put in that position.

3 Q. Will you be true to your beliefs?

4 A. Oh, definitely so; always.

5 Q. As you stated them here on the form?

6 A. Always.

7 BY MR. LUMUMBA: Okay, thank you very much.

8 BY THE COURT: Let me ask you this, Ms.
9 McClelland. Of course, you are entitled to have
10 conscientious scruples against the death penalty,
11 and a lot of folks have scruples against the death
12 penalty as a whole or, I mean or believe in it as
13 you do, in the overall scheme of things. But what
14 we are looking at is not in the overall scheme of
15 things. It's when it comes down to where you have
16 to make a decision, and after you have heard the
17 evidence and you have heard my instructions on the
18 law as to whether and under what circumstances you
19 could possibly impose the death penalty, then could
20 you yourself impose the death penalty?

21 BY MS. McCLELLAND: No. I don't think I
22 could.

23 BY THE COURT: Okay. Thank you, ma'am.
24 Number 31, Mr. Maynard.

25 (Juror 23, Ms. Lucille McClelland leaves the
26 courtroom. JUROR NUMBER 31, MR. ROBERT A. MAYNARD,
27 enters the courtroom.)

28 BY THE COURT: Mr. Maynard, they have some
29 follow up questions they wanted to ask you about

1 the death penalty.

2 INDIVIDUAL VOIR DIRE BY MR. EVANS: (Mr. Robert Maynard.)

3 Q. Good evening, Mr. Maynard. You had answered some
4 questions about your beliefs as far as the death penalty, and
5 I need to follow that up just a little bit. Of course, as
6 the Judge has told you and what we are trying to tell you now
7 is that in a death penalty trial there are two phases. The
8 first phase of that trial is strictly guilt or innocence. At
9 this phase, like I told you earlier, this Defendant or any
10 other defendant is presumed innocent. We must prove to the
11 jury that he is guilty, and once we have convinced the jury
12 that he is guilty, then we go into the second phase and only
13 then. In the first phase you don't even consider the death
14 penalty. It would come in in the second phase.

15 In the second phase the law is clear in Mississippi
16 that the jury cannot just automatically say I think the death
17 penalty is an appropriate punishment. The Judge will tell
18 you what the law is. The Judge will tell you in certain
19 circumstances you can give the death penalty as one of two
20 options. In other cases you cannot, but the Judge will
21 inform you of that.

22 In the second phase we will put on proof that will
23 justify the death penalty. That is what our job is to put on
24 that proof to the jury. If we put on proof to the jury and
25 the jury believes that because of that proof and because of
26 following the steps that the Judge gives, the death penalty
27 is an appropriate punishment. Then that can be a
28 consideration. The jury at that point can give whichever
29 penalty they think is appropriate.

1 In the instructions that the Judge gives you, what
2 I expect them to be is a long, detailed list, just a kind of
3 follow up list that the jury has to do. The first part of
4 that instruction tells the jury that there are one of several
5 elements the jury must find for the jury to even consider the
6 death penalty. One of those factors the jury would have to
7 determine is did the Defendant kill the victim in this case;
8 did the Defendant intend to kill; did the Defendant attempt
9 to kill. The jury will be asked to look -- it will be four
10 of them. The jury will be asked to look at those.

11 If the jury finds that any of those are present
12 from the elements of the facts of the case, the jury will
13 write those in. If none of those four can be found, the jury
14 can't go any further at that point. The verdict would have
15 to be life. The Judge will instruct you that. If the jury
16 finds that any one of those factors are present, the jury
17 continues down through that long instruction.

18 The next thing the jury will get to is called
19 aggravating factors. That is bad things that the Defendant
20 did just to kind of sum it up. The Judge will have them
21 listed out. In this case there will probably be one or two
22 aggravating factors for the jury to look at. The jury will
23 look at those aggravating factors, bring the facts in and
24 determine did the State prove this aggravating factor. If
25 the State, if we do not prove that aggravating factor, you
26 can't go any further; it has to be a life sentence.

27 If we did prove that aggravating factor, then you
28 can go further. The next thing that is in that instruction
29 tells you that you can consider certain mitigating factors,

1 and that is anything good that is in that instruction to
2 consider. But again, there will be a list that the Judge
3 gives you of things that you can consider.

4 If you determine that those mitigating factors
5 outweighed the bad things that he did, then you would not
6 return a death penalty. If you determine that those
7 mitigating factors did not outweigh it, then it is up to the
8 jury to determine whether they should give life or death, and
9 whichever your verdict would be at that point would be up to
10 you. Do you understand how the process would go?

11 A. Yes.

12 Q. All right. If you were called as a juror, would
13 you listen to the law that the Judge gave you, go through
14 that long instruction and follow it and base your decision of
15 the penalty on what the law was and what the facts of the
16 case were?

17 A. Yes.

18 Q. Okay. And kind of in contrast because it may have
19 got confusing earlier, you would not just automatically go to
20 the death penalty? You would listen to the evidence, and you
21 would follow the Court's instructions?

22 A. Based on the law, I would consider the death
23 penalty.

24 BY MR. EVANS: All right, thank you.

25 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Mr. Robert Maynard.)

26 Q. Good afternoon, Mr. Maynard. How are you doing?
27 Okay, I am Chokwe Lumumba, and I am representing Mr. Flowers
28 in this case, and I would just like to ask you a few
29 questions if I could. Okay? Okay, Mr. Maynard, I read your

1 form. You know, the form that they asked you to fill out?

2 A. Yeah.

3 Q. And I noticed that it said, you said in here under
4 one question that you strongly favored the death penalty;
5 correct?

6 A. Uh-hum.

7 Q. So that would be a safe thing to say that you are a
8 person who strongly favors the death penalty?

9 A. Yes.

10 Q. And it also says here, you know, in a situation
11 with violent crimes; is that correct?

12 A. Yes.

13 Q. Okay, of course, somebody's death, you know, is a
14 violent crime. Is that correct?

15 A. Yes.

16 Q. Okay, now I also thought I heard when you were
17 being interviewed or asked questions when you were sitting in
18 the audience, the question was put to you if a person was--
19 well, let me put a question to you because I can't remember
20 exactly how the question was put to you. But a person is
21 convicted of killing somebody. Okay, right. Now based upon
22 your responses previous, I would-- what I understood you to
23 be saying is that in that circumstances you strongly believe
24 a person should have the death penalty. Is that correct?

25 A. Yes.

26 Q. And really, without more, you would be willing to
27 give that person the death penalty; is that right?

28 A. Based on the evidence and the law, the evidence
29 that the gentleman described, I would be willing to consider

1 the death penalty.

2 Q. Okay, but if a person is convicted of killing
3 somebody, from what you have just told me, you are prepared--
4 I mean apparently he has put some evidence in if the person
5 got convicted; is that right?

6 A. Yes.

7 Q. Okay. And I'm not trying to ask any tricky
8 questions here. I just really want to know because you
9 understand that you are not required to have any belief one
10 way or the other. Do you understand that?

11 A. Yes.

12 Q. You have every bit of a right to be strongly in
13 favor of the death penalty if you want to be. Do you
14 understand what I'm saying?

15 A. Uh-hum.

16 Q. That is not the question here. The question here
17 is how strong, well, whether or not the strength in that,
18 and you are entitled to have a belief which says well, I
19 think that a person should be convicted or should be
20 sentenced to death if he is convicted of murder. Do you
21 understand that?

22 A. Yes.

23 Q. Okay, nobody here is going to tell you you can't
24 have that belief. The Judge is not telling you you can't
25 have that belief. The question is in this particular trial,
26 in this trial would you lean toward the death penalty before
27 any kind of proof is shown to you in the death penalty
28 stage? Say a person is convicted of murder; would you
29 automatically say, well, without more, then that person

1 should be sentenced to death?

2 A. In the sentencing phase I would, if the evidence
3 were given that warranted the death penalty, I would vote for
4 it.

5 Q. Okay, and--

6 A. Through the steps that he described, mitigating
7 circumstances, everything weighed out. If I felt in good
8 conscience that it warranted it, I would vote for it.

9 Q. Okay, and would you-- okay, but you understand also
10 that, you know, just like when you play-- I know you have
11 played basketball or football or something like that? Or you
12 have seen it played before; right?

13 A. Uh-hum.

14 Q. And you know how important it is when a referee is
15 refereeing the game so to speak?

16 A. Yes.

17 Q. One side has a strong position; the other side has
18 a strong position; right? Do you understand what I'm saying?

19 A. (No response.)

20 Q. Now if the referee is already leaning in one
21 direction, do you understand?

22 A. Uh-hum.

23 Q. Well, then that creates a problem for the game; is
24 that right?

25 A. (Juror Mr. Maynard nods his head.)

26 Q. Now in your case or in any persons' case, any
27 citizen's case you have a right to lean in one direction as
28 far as whether you believe that the death penalty should be
29 given if a person is convicted of murder. Do you understand?

1 You have the absolute right to believe that. The question is
2 here in a trial setting it becomes a little bit unbalanced if
3 the person who comes into the process ready to automatically
4 give the death penalty unless somebody proves to them they
5 shouldn't give it. Do you understand what I'm saying?

6 A. Yes.

7 Q. Now would that be your position that you would be
8 willing to give it if a person is convicted of murder unless
9 somebody proves to you that it shouldn't be given?

10 A. Honestly, I believe I would have to be convinced
11 that it were not warranted.

12 Q. Okay, and if you were, and that is right at the
13 beginning of the sentencing phase. That would be your view
14 if a person got convicted of murder; is that correct?

15 A. Right.

16 Q. Okay, and that is all we need is honesty; right.
17 Because you understand that this is not a test of your
18 character. Your character is sterling as far as, you know;
19 you understand that?

20 A. (Juror Mr. Maynard nods his head.)

21 Q. This is not-- and what your belief is on the death
22 penalty does not say the character is good or bad. Do you
23 understand that?

24 A. Yes.

25 Q. And this is not a test to you. And I'm sorry that
26 there is no other way that we can do this other than ask
27 people questions and sometimes make them think there is
28 something wrong with them. Do you understand what I'm
29 saying?

1 A. Yes, sir.

2 Q. So the thing, but that is not even the question
3 here. The question is just evaluating who would be
4 appropriate for this trial; right?

5 A. Yes.

6 Q. So would I be safe in saying that going in the
7 sentencing phase, then you would kind of be leaning one way?

8 A. Yes.

9 Q. And in fact, given what you have told us before,
10 you would be leaning strongly toward the death penalty. Is
11 that correct?

12 A. Yes.

13 Q. Okay, and the only way that somebody could get you
14 not to give it is by giving some strong, strong proof that it
15 shouldn't be given. Is that right?

16 A. Yes.

17 Q. Okay. And if, and even though the law might say
18 something different, that is still your personal belief.
19 Isn't that right?

20 A. Yes.

21 Q. And in all honesty, it would be very difficult for
22 you to follow any law that went against that belief. Isn't
23 that true?

24 A. I would follow the letter of the law in that
25 instance, but I would still have a bias. If it were not
26 specific in the law, I would be biased.

27 Q. Okay. You would have a bias. Do you think that
28 that bias might influence your, either consciously or
29 subconsciously influence what you do?

1 A. Possibly.

2 Q. And you couldn't promise that it wouldn't?

3 A. No, sir. I couldn't.

4 BY MR. LUMUMBA: I have no further questions
5 of this witness.

6 **BY THE COURT:** Thank you, Mr. Maynard. You
7 may step up out. Mr. Connor.

8 (Juror Mr. Robert Maynard left the courtroom.
9 JUROR NUMBER 40, MR. PATRICK E. CONNOR, entered the
10 courtroom.)

11 **BY THE COURT:** Mr. Connor?

12 BY JUROR MR. CONNOR: Yes, sir.

13 **BY THE COURT:** Both lawyers want to ask you
14 some questions, some follow up questions about the
15 death penalty.

16 BY MR. CONNOR: Yes, sir.

17 INDIVIDUAL VOIR DIRE BY MR. HORAN: (Mr. Patrick E. Connor.)

18 Q. Mr. Connor, you had answered the question a few
19 moments ago that in a death case when someone is charged with
20 committing a murder and the death penalty is an option, that
21 you felt like you would automatically give that. Is that
22 your response, Mr. Connor?

23 A. Yes, sir.

24 Q. All right, let me explain something to you. We
25 have two phases. We have a guilt phase, and we have a
26 sentencing phase. After you have decided guilt, only until
27 you have decided the guilt or innocence of the Defendant,
28 only at that point in time are you to consider the death
29 penalty. Do you understand that?

1 A. Oh, yes, okay.

2 Q. Okay, would you follow that particular instruction
3 if the Court so--

4 A. --oh, yes.

5 Q. --instructed you?

6 A. Yeah.

7 Q. I anticipate should we get to that point that we
8 will enter into a second phase called a sentencing phase.
9 And at that phase I anticipate that we would put on evidence
10 in support of what is called aggravating circumstances.
11 Those are things that tend to or it is proof that is to
12 persuade you. We are trying to persuade you to impose the
13 death penalty. Now I anticipate that the Defendant through
14 counsel would put on what is called mitigating factors.
15 Those are things that they would want to show that would be,
16 show to you why you should not impose a death penalty. Now
17 the law in Mississippi is that before you can consider the
18 death penalty, you are to balance the aggravating
19 circumstances against the mitigating circumstances. And if
20 the mitigating circumstances do not outweigh the aggravating
21 circumstances, the law in Mississippi says that you may
22 impose the death penalty. If Judge Morgan gave you an
23 instruction to that effect, that you are to consider those
24 particular factors and consider them in that particular way,
25 would you follow that law?

26 A. I would follow the law. Yes.

27 Q. Okay, so when you say automatically--

28 A. --but excuse me. If he said I may, I have the
29 option to do the death penalty.

1 Q. Right.

2 A. Well, yeah, I would follow it, but if I had the
3 option, that means I could vote for the death penalty.

4 Q. That's right, and you have that option, but you are
5 not duty bound to do that until you consider the aggravating
6 factors--

7 A. --well, yes, I guess--

8 Q. --against the mitigating factors. Would you do
9 that?

10 A. Yes.

11 Q. There is a long instruction that is about five
12 pages long--

13 A. I would follow the law.

14 Q. I anticipate-- would you follow the law?

15 A. Yes.

16 Q. So your statement earlier about automatically
17 following the death penalty is not necessarily true?

18 A. I guess; no, sir.

19 Q. That doesn't mean you are not in favor of the death
20 penalty.

21 A. Yes.

22 Q. I mean it's a lot of people that are in favor of
23 the--

24 A. --I have been up all night. I'm a--

25 Q. Sir?

26 A. I am a casino bartender, and I have been up since--
27 I haven't been to bed for a long time.

28 Q. I understand.

29 A. I just, I got off work at 7 o'clock, and I come

1 right here.

2 Q. I understand.

3 A. But I knew what I was talking about. I shouldn't
4 have been so radical maybe.

5 Q. Right, but you could follow the law?

6 A. Yes, I could follow the law.

7 Q. And if the Court instructed you-- I mean you may
8 find that the mitigating, if you find that the mitigating
9 factors outweigh the aggravating factors, you wouldn't have a
10 problem with not imposing the death penalty, would you?

11 A. No. No.

12 BY MR. HORAN: No further questions.

13 BY MR. LUMUMBA: Judge, unfortunately, that is
14 another one of the forms that we are missing.
15 Number 40.

16 BY THE COURT: Okay. Connie, if you would see
17 if you can find that. Number 40.

18 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:

19 Q. Good afternoon. I am Chokwe Lumumba, and I am
20 representing Mr. Flowers in this case along with Harvey
21 Freelon. Mr. Connor, you know, this is just another part of
22 what the Judge told you, voir dire, right. And voir dire is
23 that-- I don't know; some people say it's a French word. I
24 have heard some people say it's an Italian word. I don't
25 know what it is, but it's supposed to mean "to tell the
26 truth." Okay.

27 A. Yes.

28 Q. And I think that the Judge said there can be no
29 wrong answers. All right, the only thing we need to know is

1 what you really feel coming from you, okay?

2 A. Yes.

3 Q. And this is why I am saying that. There is no law
4 that requires you not to want to automatically give the
5 person the death penalty. Do you understand that?

6 A. That does not require?

7 Q. There is no law that requires you to--

8 A. Automatic.

9 Q. No, it's no law which requires you to have a
10 belief, which says that you are forbidden to have the belief
11 that a person should automatically get the death penalty if
12 they are convicted of murder. Do you understand that? There
13 is no law that prevents you from feeling that way. Do you
14 understand what I'm saying?

15 A. Yes.

16 Q. Okay. No law that prevents you from having the
17 views that you expressed out there if those are your real
18 views. Do you understand that?

19 A. Uh-hum.

20 Q. I mean, you know, when you formed those views, you
21 had no idea you would be sitting here in this case, did you?

22 A. No.

23 Q. Okay, now we-- and you realize that you are
24 entitled to have whatever views that you have as an
25 individual and a citizen. You understand that?

26 A. Yes.

27 Q. Okay. Now we are hearing the case and now that we
28 are hearing the case, there are certain questions we ask, and
29 we don't ask these questions to judge people. We ask these

1 questions to see if a particular person might be the best for
2 this case. Do you know what I'm saying?

3 A. Yes.

4 Q. A person might be great for a different case,
5 right, but that doesn't mean that the person is not a good
6 jury or whatever. You know what I'm saying? So what we are
7 trying to ascertain, because there seems to be a little
8 different from what you said out there to what you are saying
9 up here, and that's the only reason I am pointing it out,
10 okay?

11 A. Uh-hum.

12 Q. And sometimes when people say well, the law says
13 that. Well, then, you know, people feel boom; I better jump
14 with the law. And you are required to follow the law if you
15 get on the jury. Do you understand what I'm saying?

16 A. Yes.

17 Q. But this is all about people who feel that that is
18 a law that they may not be able to follow in good
19 conscience. Do you understand what I'm saying?

20 A. Yes.

21 Q. This is about the time for people to say well,
22 look, Judge. This is not my cup of tea. Right; you know
23 what I'm saying? If it's not, do you see what I'm saying?

24 A. Yes.

25 Q. And so the question I'm asking you, if I understood
26 you correctly, what you were saying is that if a person,
27 because you raised your hand. You were the first one to
28 raise your hand, you know, when the Judge asked you that
29 question. The question was put to you, do you feel that if a

1 person is convicted of murder-- I mean they have already been
2 convicted now. They have been convicted; they are found
3 guilty. Boom, boom. Do you feel that that person who is
4 convicted of murder should get the death penalty, you know,
5 if they are convicted of murder?

6 A. Yes, sir. I do.

7 Q. Okay, and that is your view; right?

8 A. Yes, if they, if it is okay, if I have that
9 option.

10 Q. Yeah, yeah, well--

11 A. I mean, well, yeah, we are getting--

12 Q. Yeah, I understand. You have that option.

13 A. Yes.

14 Q. But then the question goes a little further. The
15 question goes a little further. The question goes this:
16 Having that view, what that means that if a person got to the
17 death penalty phase, it would be very -- in order for you not
18 to give them death, they would have to convince you by some
19 strong proof not to give them death. Isn't that right, if
20 they had already been convicted of murder?

21 A. Yeah, something. Yeah.

22 Q. Would that mean that actually it would be very
23 difficult for you not to give a person death if they were
24 convicted of killing somebody else if you were on a jury?

25 A. Repeat that, sir.

26 Q. Would it be very difficult for you not to give a
27 person the death penalty--

28 A. --Oh, not to give it?

29 Q. Yeah.

1 A. No.

2 Q. Okay. Would it be difficult for you not to give
3 the death penalty if a person was convicted of killing
4 somebody?

5 A. It would be hard for me not to give it, yes.

6 Q. If a person was convicted of killing somebody.
7 Would you be inclined to give it to them if they were
8 convicted of killing?

9 A. Yes. Yes.

10 Q. You would?

11 A. Yes.

12 Q. And that would be your strong inclination?

13 A. Yes.

14 Q. And you would want to stick with that inclination;
15 right?

16 A. Yes.

17 Q. Regardless of whatever else was said?

18 A. Yes.

19 Q. Because whatever else is said, they are still
20 convicted of killing somebody; right?

21 A. Yes, if you took a life.

22 Q. And your view is that they should get the death--

23 A. --Yes.

24 Q. And you would follow that; right?

25 A. Yes.

26 Q. Okay. And even if the Judge says well, look, at
27 this point you consider life or death, the truth of the
28 matter is that as long as they have been convicted of killing
29 somebody, because of your views, if you got the option of

1 death, that's what you are going to give them?

2 A. Yes.

3 Q. Is that right?

4 A. Yes.

5 Q. Okay. Regardless of whatever?

6 A. Yes, sir.

7 BY MR. LUMUMBA: Okay. I have no further
8 questions.

9 BY THE COURT: Okay. Thank you, Mr. Connor.
10 You may go out.

11 (Juror Mr. Patrick Connor leaves the
12 courtroom.)

13 BY THE COURT: We are going to take a minute,
14 gentlemen, and let the Court Reporter have a break.
15 We will be just a few minutes. Let me see the
16 lawyers up here before you go.

17 (CONFERENCE AT THE BENCH WITH THE JURY OUT AS
18 FOLLOWS:)

19 BY THE COURT: We have got five more of these
20 which will at least take us to 5 o'clock if we go
21 like we have been going, and I have to let the
22 hotel know something about this. I don't think we
23 will be able to finish the jury thing. I don't
24 mind us working past 5:00 and getting further into
25 this, but I don't think -- y'all don't see any way
26 for us to get the jury today, do you?

27 BY MR. LUMUMBA: No. I don't think so.

28 BY THE COURT: You haven't started, and he is
29 not through.

1 BY MR. EVANS: I don't see how we could.

2 BY THE COURT: Okay, well, I'm going to-- we
3 are going to do that now. Before I release them
4 for the day, we are going to go over some of these
5 that are for cause, and I think we will wind up we
6 are going to agree on some folks that say they
7 can't be fair and impartial, and we won't have to
8 bring them back. We won't bring them back
9 tomorrow, but I'm not going to do that right now.
10 I am just telling you that's what I anticipate
11 doing.

12 BY MR. LUMUMBA: Okay.

13 BY THE COURT: Okay, we are all on the same
14 program. Let's take about five minutes.

15 (FOLLOWING A BRIEF RECESS, THERE WAS THE
16 FOLLOWING IN THE COURTROOM CONCERNING JUROR NUMBER
17 27, TYRON D. COLE, WHO HAD ORIGINALLY BEEN CALLED
18 AS A JUROR FOR A CIRCUIT COURT CASE DOWN THE HALL.
19 THE JURY PANEL WAS OUTSIDE THE COURTROOM, AND ALL
20 COUNSEL AND THE DEFENDANT WERE PRESENT:)

21 BY THE COURT: Let me see y'all. Well, I
22 don't know that I have to see you up here. I don't
23 know whether that is, what I have been told is true
24 or not, but have y'all got any objection to whoever
25 it is staying?

26 BY MR. LUMUMBA: I don't. No. Actually I--

27 BY MR. EVANS: --I don't know that he--

28 BY MR. LUMUMBA: At this point he has done
29 took the oath.

1 **BY THE COURT:** That is what I think too. If
2 you have got no objection, we can keep him.

3 BY MR. HORAN: We need him to fill out a
4 questionnaire if that is okay, Judge.

5 **BY THE COURT:** Yeah, we will do that. We
6 won't be through today anyhow. He can fill out the
7 questionnaire, and if that raises any questions
8 that you need to go into further, we will. But as
9 far as I know, he has been here during all voir
10 dire and everything else so. It is always
11 something.

12 BY MR. EVANS: His bad luck, isn't it?

13 **BY THE COURT:** We won't tell him that now, you
14 understand. Okay, Ms. Henson, number 43.

15 (JUROR NUMBER 43, MS. NELENNE L. HENSON enters
16 the courtroom.)

17 **BY THE COURT:** Ms. Henson, you can have a seat
18 up here, please, ma'am. Ms. Henson, the attorneys
19 have some follow up questions they want to ask you
20 concerning the death penalty.

21 INDIVIDUAL VOIR DIRE BY MR. HORAN:

22 Q. Ms. Henson, you had indicated through the Court's
23 questioning and some of Mr. Evans' questions that you were
24 against the death penalty. Is that what your position is?

25 A. Yes, sir.

26 Q. Under no circumstances, regardless of the proof and
27 regardless of what the instructions from the Court would be,
28 would you be willing to impose the death penalty?

29 A. No, sir.

1 Q. Under absolutely no circumstances?

2 A. No, sir.

3 Q. Okay. Regardless, and I think in your
4 questionnaire you explained your answer. You stated that you
5 would "never vote to execute another human being no matter
6 how much they deserved it. God will sort all that out in His
7 own way." And basically, your objection to the death penalty
8 is on religious grounds; is that correct?

9 A. Yes, sir.

10 Q. Okay. All right, and there is absolutely no amount
11 of proof that would sway you, make you decide to impose a
12 death penalty at all?

13 A. No, sir.

14 BY MR. HORAN: Thank you.

15 BY JUROR MS. HENSON: You're welcome.

16 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Ms. Nelenne L. Henson.)

17 Q. Good afternoon, Ms. Henson. How are you doing?

18 A. Okay.

19 Q. I am Chokwe Lumumba, and I am representing Mr.
20 Flowers, and I have just a few questions. You have never sat
21 in a jury trial before?

22 A. No, sir.

23 Q. Okay, so obviously you have never sat in a capital
24 case before?

25 A. No, sir.

26 Q. Right. Okay. I have noted your strong opposition,
27 and basically, what I'm doing is I am coming up to ask you
28 some questions to see if what, in the law they call it
29 rehabilitate your view. What that means is, what that means,

1 we are real presumptuous as lawyers, but what that really
2 means is that I am trying to see if there is any way that
3 there may have been some things you haven't thought about
4 which would reflect slightly different view on your behalf;
5 okay?

6 A. Okay.

7 Q. And this is what I'm going to ask you, this here.
8 First of all, you are aware of the fact that there is many
9 people in the community, and many of them have different
10 views on the death penalty; right?

11 A. (Juror Ms. Henson nods her head.)

12 BY THE COURT: Ms. Henson, you will need to
13 answer out loud because she has to take down your
14 answer.

15 BY THE JUROR:

16 A. Yes, sir.

17 Q. Okay, some of them oppose it, and some of them
18 support it; right?

19 A. Yes, sir.

20 Q. And some of them have strong opposition like you
21 do, and some have strong support for it; right?

22 A. Yes, sir.

23 Q. Okay, what the law does, you know, and believe me,
24 I'm not trying to change your views. I wouldn't be doing
25 what I do if, you know, that was the case, but let me-- what
26 I am asking you is this: Is that you, the law and the Judge
27 hasn't charged you this and he will never charge you that
28 because of your views, you cannot sit in a case like this.
29 You understand what I'm saying?

1 A. Uh-hum.

2 Q. That is not the standard as far as I understand the
3 law. The standard is given whatever views you have because
4 you are in a community and you have a right to have them, can
5 you work with the law and come out with a decision? You make
6 the decision. The law doesn't make the decision. The law
7 doesn't make a decision as to whether a person is guilty or
8 innocent. The law doesn't make a decision as to whether the
9 death penalty should be imposed or shouldn't be imposed. It
10 just gives you some rules that you have got to go by, and
11 then you make the decision. Do you understand what I'm
12 saying? And the rules are presumably designed to put it in
13 the way which is best for you to have the total opportunity
14 to make a decision. Do you understand what I'm saying?

15 A. Yes, sir.

16 Q. So let me just say this to get right to the point.
17 The law, I think, shows some compromise or some sensitivity
18 to the different views in the community. The first thing it
19 says that you can't give a death penalty. You can't even
20 think about a sentence or any kind of penalty period until
21 you get, unless somebody is convicted; right?

22 A. (Juror Ms. Henson nods her head.)

23 Q. Okay, and it says at the very beginning a person is
24 presumed innocent.

25 A. (Juror Ms. Henson nods her head.)

26 Q. You have to say yes or no.

27 A. Oh, yes. Yes, sir.

28 Q. Okay, and when you walk into the court, the Judge
29 tells you right off is that this man is presumed innocent.

1 He is presumed innocent, and he has pled not guilty; right?

2 A. Yes, sir.

3 Q. Okay, and it is up to the prosecution to prove
4 before you can go any further; right?

5 A. Uh-hum.

6 Q. So the law, I think, shows some sensitivity. Now
7 you don't have any problem with that, do you?

8 A. Oh, no, sir.

9 Q. Okay. Second, say somebody in some case because,
10 of course, we submit in this one it will never get there.
11 That is our submission. You know, we submit that they are a
12 long way. They have got a long way to go, and they will
13 never get there. But say in some case, any case you sit and
14 there is a proof of guilt, okay. Then the next thing that
15 happens is then you have to go to a sentencing hearing;
16 right? Having jumped that first hurdle, the second hurdle
17 becomes-- the Judge will tell you you can't even consider
18 the death penalty in the sentencing hearing unless the State
19 comes up and says, with what they call some sufficient
20 aggravating circumstances; right?

21 A. (Juror Ms. Henson nods her head.)

22 Q. That means reasons for death, you know, reasons why
23 there should be death. The State has to prove some reasons
24 why there should be death. Now the Judge will tell you, the
25 Judge will tell you what those reasons, what, you know, the
26 death-- he will define what those reasons can be. He will
27 say these can be, the State has to prove aggravating
28 circumstances. He is not going to tell you whether the State
29 has proved them. You have got to determine that. You

1 understand what I'm saying?

2 A. Yes, sir.

3 Q. And then after that, if they get past that hurdle,
4 which they may not, right, because it is up to each juror
5 talking together to make a decision whether they get past
6 that hurdle; right?

7 A. Yes.

8 Q. Still you can't be sentenced to the death penalty
9 if the defense shows mitigating circumstances, in other
10 words, reason for life which outweigh the reasons for death.
11 Do you understand what I'm saying?

12 A. Yes, sir.

13 Q. So here is this law which allows a death penalty
14 still showing the sensitivity to life. Do you understand
15 what I'm saying?

16 A. Yes, sir.

17 Q. Okay, so and probably showing sensitivity, I would
18 guess, to the different fact that different people in this
19 community believe different things; right? Do you understand
20 what I'm saying?

21 A. Yes, sir.

22 Q. So then we get down to if they jump one, two, three
23 hurdles, if they jump all those hurdles, then they get down
24 to the point where the Judge, if I understood his instruction
25 and I think I did, is that there may be a point where he is
26 saying that you, that, you know, that if you find that they
27 have jumped these hurdles, then you should consider both
28 options. You understand what I'm saying?

29 A. Uh-hum.

1 Q. You should consider life and you should consider
2 death. You are not going to say and I don't think the law
3 says you have got to give life, and the law is not going to
4 say you have got to give death. Do you see what I'm saying?

5 A. Yes, sir.

6 Q. The law is going to say, you know, those are the
7 options, and each individual juror here again has to come to
8 a conclusion in their mind that death is the option before
9 death can ever-- I mean, of course, like the Judge has
10 reminded me, each individual juror in consultation with the
11 other jurors. In other words, you can't just sit in the jury
12 room and say, you know, and then just, you know, you have to
13 talk to each other, you know, and you talk to each other.
14 But ultimately it's an individual decision for each
15 individual juror. And each individual juror has to say that
16 they feel under the circumstances after thoroughly
17 considering the case that the circumstances justify and
18 warrant the death penalty before a death penalty can ever be
19 given; right? Because if each individual juror doesn't agree
20 on it, it can't be given; right?

21 A. Correct.

22 Q. Okay, it can't be given. If any one person doesn't
23 agree on it after consultation, it can't be given. Do you
24 understand what I'm saying?

25 A. Yes, sir.

26 Q. Okay. So having described what I think and I'm not
27 trying to be tricky or anything and not being so arrogant to
28 think that we can rehabilitate you or bring you in any
29 direction, having just, you know, having that process

1 explained to you in that way about what I think is the law's
2 appreciation for the view on life, you know, okay, even
3 though it may not be what you want it to be. It may not be
4 what I want it to be, but it's at least there. The question
5 I would ask you that given that, can you follow that law and
6 can you get to-- could you follow that law and tell this
7 Court that you would follow that law and mean it and make the
8 prosecution jump all the hurdles if they can, you know, in
9 your judgment; right?

10 A. Uh-hum.

11 Q. And then if they ever do jump all the hurdles, can
12 you tell the Court that you would consider both options and
13 give the one that you felt was warranted? That's the
14 question.

15 A. So there is a difference in me saying I would
16 consider the two options and there is a difference in me
17 saying under no circumstances I would give the death
18 penalty? I mean are those two separate--

19 Q. Well, the issue is now-- and I don't think that it
20 is, I think that there is a difference in saying, first of
21 all, I think the way it is explained is because they want you
22 to understand is that what they are asking you to do is to
23 consider. And then but, of course, you really aren't
24 considering it if--

25 A. --I wouldn't be considering.

26 Q. --Okay, excuse me. You wouldn't be considering it
27 if you say well, look -- and I am just throwing out an
28 example here. If somebody who had just murdered six million
29 people were in the courtroom, you know what I'm saying?

1 A. Yes.

2 Q. Even under that circumstance, I would never give
3 it. If that was-- I mean I wouldn't even consider it
4 really. You know, I would just be sitting there waiting for
5 my chance to say life; right? You see what I'm saying? I
6 was just waiting there. That is not really--

7 A. That would be me.

8 Q. That is you?

9 A. That would be me.

10 Q. That is you, huh? You are sure that is you?

11 A. Just waiting to say life.

12 Q. Is that right?

13 A. Sorry.

14 Q. Okay, so I understand.

15 BY MR. LUMUMBA: I have no further questions.

16 **BY THE COURT:** Let me make sure I understand
17 and I think I do. You are saying that you would
18 consider it, but even after you considered it and
19 heard all the evidence and everything, you could
20 not impose the death penalty? Is that what you are
21 telling me?

22 BY MS. NELENNE HENSON: If I told you I was
23 actually considering the death penalty, I would be
24 telling you a story.

25 **BY THE COURT:** Okay, Ms. Henson, that is fair
26 enough. Thank you, ma'am.

27 BY MS. HENSON: You're welcome.

28 (Juror Ms. Nelenne Henson leaves the
29 courtroom.)

1 **BY THE COURT:** Number 49, Ms. Rishel.

2 (JUROR NUMBER 49, MS. DOROTHY DICKSON RISHEL
3 enters the courtroom.)

4 BY MR. HORAN: May I proceed, Your Honor?

5 **BY THE COURT:** Yes, sir. They are going to
6 ask you some follow up questions to what I asked
7 about the death penalty.

8 BY JUROR MS. RISHEL: Yes, sir. Thank you.

9 INDIVIDUAL VOIR DIRE BY MR. HORAN:

10 Q. Mr. Rishel, as I recall, it has been a few hours
11 ago since you responded to the Court's question regarding the
12 death penalty. I believe you stated, and correct me if I am
13 wrong, but based on religious reasons that you were opposed
14 to the death penalty; is that correct?

15 A. Correct. Yes, sir.

16 Q. Okay, and that is not based on anything that has
17 happened to you in the past or anything like that, but as
18 your Christian belief prohibits you from imposing the death
19 penalty under any circumstances. Is that right, Ms. Rishel?

20 A. Yes, sir. Correct.

21 Q. And regardless of what the Court instructed you, if
22 you were selected to hear this case and if you got past the
23 guilt phase and got to the sentencing phase; you understand
24 that's what we are here for?

25 A. Yes, sir.

26 Q. Regardless of what the Court instructed you and
27 regardless of what other jurors, after consulting with them
28 and applying the facts to the jury instructions, absolutely
29 under no circumstances based on your response could you

1 impose the death penalty? Is that your answer here under
2 oath here today?

3 A. Correct. Yes, sir.

4 Q. And there is no instruction of law that could make
5 you change that?

6 A. No, sir.

7 BY MR. HORAN: No further questions.

8 BY MR. LUMUMBA: I just have a few questions.

9 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Ms. Dorothy Rishel.)

10 Q. Good afternoon.

11 A. Hi.

12 Q. Good afternoon. Brishel?

13 A. Rishel.

14 Q. Rishel, Rishel, right. And I am Chokwe Lumumba,
15 and I am representing Mr. Flowers. He is here helping us
16 along with my partner, Harvey Freelon, and our investigator,
17 Ervin Bradley. The only thing I guess I want to ask is
18 this. See, this is a period of time, this is why we bring
19 you in here to see if there is anything, any light can be
20 shed on anything that you didn't understand - and perhaps you
21 understand everything quite clearly - which would lead you to
22 say that you could be a juror; you could comply with the law
23 in the case; right?

24 A. (Juror Ms. Rishel nods her head.)

25 Q. And the only thing I guess I really want to
26 emphasize, and I can be corrected if I am wrong. But the law
27 never says that you have to impose the death penalty. Do you
28 understand? There is no law--

29 A. --Yes, sir. I understand that.

1 Q. Okay, okay, all right. It basically and secondly,
2 the law does not even allow you to consider it unless several
3 things happen; right? One is there has to be a conviction
4 which overcomes the presumption of innocence; right?

5 A. Right.

6 Q. Secondly, even in the sentencing phase, if it ever
7 gets there, and we submit that it will never happen in this
8 case. But if it ever gets there, they have to show, they
9 have to prove a reason why there should be a death penalty.
10 That's what they call aggravating circumstances; right?

11 A. Right.

12 Q. Okay, and they have to prove that to you and other
13 jurors; right? And every juror has to agree on that, and I'm
14 not suggesting in any way that you are being less than
15 forthright about whether you can, whether it is possible for
16 them to prove that. But I just want you to know that they do
17 have to prove it to you and to other jurors. It's not
18 somebody else that they are proving it to, okay. The second
19 thing is that even if they do prove that there is some reason
20 for death, if the defense comes forth and shows reason for
21 life in any case which ever winds up considering this kind of
22 stuff and those reasons outweigh what they call the
23 aggravating circumstances, then you still can't consider
24 death. You can't even consider it?

25 A. Right.

26 Q. Only when you get past those two hurdles, three
27 hurdles - a conviction, aggravating circumstances, and the
28 mitigating circumstance issue will then the law turn to you
29 and say if you, the jury, carry yourself beyond those

1 hurdles, then you, the jury, have the right to give the death
2 penalty or life, whichever one that you determine is
3 warranted; right?

4 A. (No audible response).

5 Q. So I understand very well a person who has strong
6 opposition to the death penalty, and believe me, we are not
7 trying to change that opposition. But the question that I
8 have is this. I think that the law is built that way, and
9 the law even allows us to ask you these questions at this
10 time because its statement is that we are not trying to just
11 get people in here who believe in the death penalty; right?
12 Okay, but we have to have people regardless of what their
13 beliefs that are willing to comply with the procedures and go
14 through those procedures and make honest decisions. Do you
15 see what I'm saying?

16 A. (Juror Ms. Rishel nods her head.)

17 Q. So given all that, is your position that you cannot
18 consider the death penalty, or if given, if you made it
19 through all those hurdles, could you consider it and reach
20 the decision which you felt the evidence warranted? You know
21 what I'm saying? The evidence which you don't know anything
22 about at this point.

23 A. Right. My belief is that there would never be
24 circumstances that would warrant the death penalty in my
25 opinion. I don't believe the law is right. So I could never
26 vote for that.

27 Q. Okay, all right. And that's a religious belief?

28 A. Yes, sir.

29 BY MR. LUMUMBA: Okay. Thank you. I have no

1 further questions.

2 **BY THE COURT:** Thank you, Ms. Rishel. You
3 need to step out, please. Number 56, Ms. Blakely.

4 (Juror Ms. Dorothy Rishel left the courtroom,
5 and JUROR NUMBER 56, MS. CATHERINE BLAKELY, entered
6 the courtroom.)

7 **BY THE COURT:** Have a seat up here, Ms.
8 Blakely. Ms. Blakely, the lawyers want to ask you
9 a few other questions about the death penalty.
10 Okay?

11 **BY JUROR MS. BLAKELY:** Yes, sir.

12 INDIVIDUAL VOIR DIRE BY MR. HORAN: (Ms. Catherine Blakely.)

13 Q. Ms. Blakely, how are you doing this afternoon?

14 A. I am fine.

15 Q. I recall your answer to the Judge's question that
16 you felt like you could impose the death penalty but only--
17 first you were hesitant to say that you could, and then you
18 said if the State proved that he was really guilty. Does
19 that--

20 A. No, I said if I.

21 Q. If we proved our case beyond a reasonable doubt,
22 but then you said, I believe -- our burden is to prove our
23 case beyond a reasonable doubt.

24 A. Yes.

25 Q. But I think your response was that if they proved
26 that he was really guilty.

27 A. Yes.

28 Q. What did you mean by that, Ms. Blakely?

29 A. (No immediate response.)

1 Q. Would you apply a different standard of proof to a
2 death penalty case than you would any other case? Would you
3 require the State to prove its case something other than
4 beyond a reasonable doubt simply because the death penalty
5 was an issue?

6 A. No.

7 BY MR. LUMUMBA: Uh.

8 BY MR. HORAN: That is a proper question.

9 BY MR. LUMUMBA: Well, my objection is this.
10 Counsel's question is unclear. I guess that is my
11 question. I don't have a problem if he is talking
12 about the, what you call--

13 BY MR. HORAN: --I will rephrase it.

14 BY THE COURT: Rephrase it if you will.

15 BY MR. HORAN:

16 Q. Ms. Blakely, would you apply a different standard
17 of proof to this case just because the death penalty is
18 involved?

19 A. No.

20 Q. You wouldn't hold us to a higher burden than you
21 would any other case?

22 A. No.

23 Q. The burden of proof. And now I want you to
24 understand that I think the Court is going to instruct you
25 that the State has to prove its case beyond a reasonable
26 doubt. I can't define that for you. You have to decide that
27 on your own.

28 A. Yes.

29 Q. Counsel for the Defendant cannot decide that, and

1 the Court can't tell you what that means. That has to be
2 something in your own mind that you decide. Do you
3 understand that, Ms. Blakely?

4 A. Yes.

5 Q. And based on what the Court has asked you and what
6 I have asked you and what Mr. Evans has asked you, do you
7 feel like that you can impose the death penalty, or do you
8 have any scruples against the death penalty one way or the
9 other?

10 A. Yes.

11 Q. Do you have scruples against the death penalty, or
12 do you have an objection to the death--

13 A. --I have an objection maybe to the death penalty
14 concerning-- maybe it is me.

15 Q. Okay, well, explain that to me. I mean you explain
16 that to me what you mean by that.

17 A. Well, maybe I wouldn't want to, if I didn't know
18 somebody was, if I didn't know that they really was guilty, I
19 wouldn't want to be the one that sentenced them to death
20 maybe.

21 Q. Okay, that's what I was kind of asking you while
22 ago, Ms. Blakely. Do you understand that before you get to
23 the death question, you have to determine whether or not he
24 is guilty or not?

25 A. Yes.

26 Q. The first phase is called the guilt phase?

27 A. Yes.

28 Q. You don't even consider the death penalty. You are
29 not going to be instructed on the death penalty until after

1 the jury decides whether or not he is guilty or not?

2 A. Yes.

3 Q. Are you telling me, the Court, and Counsel for the
4 Defendant that you won't consider the death penalty until you
5 have made a decision on guilt or innocence?

6 A. Yes.

7 Q. Okay. Would you let your decision or the burden of
8 proof that we have as to his guilt or innocence be affected
9 by whether or not you will be charged with the responsibility
10 of deciding the death penalty?

11 A. (No response.)

12 Q. Do you understand my question? Would you let that
13 interfere with your decision on the first phase, whether or
14 not you have to make a decision at some point in time on the
15 death penalty? Would that change your opinion, your ability
16 to determine the guilt phase?

17 A. The death penalty, no, the death penalty would not
18 change my opinion to determine whether you are guilty.

19 Q. Okay, all right. That is fine. You would not let
20 that interfere with you one way or the other?

21 A. No.

22 BY MR. HORAN: I have no further questions.

23 BY MR. LUMUMBA: I just have a couple of short
24 ones really.

25 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Juror Catherine
26 Blakely).

27 Q. On your form I noticed that you indicated that you
28 were strongly in favor of the death penalty; right?

29 A. (Juror Ms. Blakely laughs.)

1 Q. Did you not?

2 A. Yes, I did say that.

3 Q. Okay, I understand. And secondly, I just want to
4 say this. You know, we asked a lot of questions about the
5 death penalty?

6 A. Uh-hum.

7 Q. Because this is a capital case and the Court is
8 required to ask some of these questions. Do you understand
9 what I'm saying? But one thing that I am concerned about,
10 and that's why I ask this question, is that we don't lose
11 focus. In other words, nobody here is eligible for the death
12 penalty as we sit here. Do you understand that?

13 A. Yes.

14 Q. Okay, in other words, they have got a long way to
15 go before they get any proof that will prove that. Do you
16 understand what I'm saying?

17 A. Yes.

18 Q. So the question that is before us right now, and I
19 want to know if you can keep the focus on the fact that if
20 you are selected for the jury, that they would have to prove
21 Mr. Flowers did something, you know, did what was charged
22 before you could even get anywhere near considering any
23 sentence?

24 A. Yes.

25 Q. And would you be willing to afford him the
26 presumption of innocence and keep your focus on that?

27 A. Yes.

28 Q. During the trial, okay.

29 A. Yes.

1 Q. And we submit--

2 BY MR. HORAN: Your Honor, I object to that.
3 He can't say we submit anything. That is improper
4 for him to do that during voir dire or closing
5 arguments, what his opinion is, and he has been
6 doing it on every juror, and I object to it. It's
7 not proper.

8 BY MR. LUMUMBA: Actually, what is improper,
9 Judge, is to say "I believe" like Counsel did. I
10 say "We submit" because we submit it's the proper
11 form that they say. You can submit what you--

12 BY THE COURT: --All right, go ahead.

13 BY MR. LUMUMBA:

14 Q. We submit that you will never have to consider the
15 death penalty because he will never be convicted. Do you
16 understand?

17 A. Yes.

18 Q. Okay, but that is for the jury which is picked to
19 decide. Do you see what I'm saying?

20 A. (Juror Ms. Blakely nods her head.)

21 Q. Okay, and you would have no problem with being part
22 of a fair decision?

23 A. No.

24 BY MR. LUMUMBA: Okay, I have no further
25 questions.

26 BY THE COURT: Ms. Blakely, you have just said
27 that you would not let the fact that the death
28 penalty could be involved in this case affect how
29 you would vote as far as guilt or innocence; is

1 that right? Isn't that what you said?

2 BY JUROR MS. BLAKELY: Yes.

3 **BY THE COURT:** Okay. Well, let's say it got
4 to the point where there was a guilty verdict. And
5 you will hear additional facts on what kind of
6 sentence ought to be imposed in this case. And
7 then I'm going to give you some instructions on the
8 law that will tell you under what circumstances
9 that you could even consider the death penalty.
10 And at some point in time at that second phase of
11 the trial it would be necessary that you consider
12 either death or life. Can you consider both of
13 those options? Can you look at the evidence and
14 follow my instructions on the law, and if the
15 evidence warrants it and the law says that you can
16 do it, could you impose the death penalty?

17 BY JUROR MS. BLAKELY: (Pause) Could I impose
18 the death penalty if he was given a sentence of
19 death or life? Is that what you--

20 **BY THE COURT:** Your two options will be death
21 or life if it gets to that point.

22 BY JUROR MS. BLAKELY: Uh-huh.

23 **BY THE COURT:** At that point, in other words,
24 the first thing that happens is the jury goes back
25 and they decide whether or not he is guilty or
26 innocent. Obviously, if he is innocent or not
27 guilty, we don't go any further. If the jury finds
28 him guilty, then the jury must determine what the
29 sentence is. They are going to have two options.

1 They are going to have an option of death, and they
2 are going to have the option of life, or life
3 without parole. At that second phase we are going
4 to do essentially what we did in the first phase.
5 The State is going to put on some evidence, and I
6 expect the Defendant to put on some evidence.
7 After they have done that, then I'm going to give
8 you some instructions that tell you what the law is
9 and tell you whether or not you can consider the
10 death penalty at all. If I give you that
11 instruction that says that you can, in fact,
12 consider the death penalty, then when you and the
13 other jurors go back there to determine what is
14 going to happen, you will have two options. You
15 will have the death penalty, or you will have life
16 without parole. Can you consider both of those
17 options and base your decision on the evidence as
18 you see it from the witness stand and the
19 instructions on the law that I give you?

20 BY JUROR MS. BLAKELY: (No response.)

21 **BY THE COURT:** Or can you not under any
22 circumstances give the death penalty?

23 BY JUROR MS. BLAKELY: No.

24 **BY THE COURT:** You cannot?

25 BY JUROR MS. BLAKELY: No.

26 **BY THE COURT:** Okay. Thank you, Ms. Blakely.
27 Number 61, Ms. Walker.

28 (Juror Ms. Catherine Blakely leaves the
29 courtroom, and JUROR NUMBER 61, MS. SYLVIA J.

1 WALKER, enters the courtroom.)

2 **BY THE COURT:** Ms. Walker, the attorneys want
3 to ask you some further questions about the death
4 penalty.

5 INDIVIDUAL VOIR DIRE BY MR. HORAN: (Ms. Sylvia Walker.)

6 Q. Hello, Ms. Walker. How are you doing?

7 A. Fine.

8 Q. You correct me if I am wrong, okay, Ms. Walker, but
9 I recall that you responded to the Court's questions and I
10 think one of Mr. Evans' questions that you had religious
11 objections to judging anyone period; is that right?

12 A. Uh-hum. Yes.

13 Q. As to guilt or innocence; right?

14 A. Yes.

15 Q. And I assume that that is something that-- that is
16 your religious belief?

17 A. Yes.

18 Q. There is absolutely nothing wrong with that. Now I
19 want to ask you a second question. Is there any instruction
20 that the Court could give you that would change your personal
21 opinion regarding the judgment of another human being? Any
22 instruction whatsoever?

23 A. No.

24 Q. Thank you, Ms. Walker. And you also said that you
25 had an objection to the death penalty. Is that also on
26 religious grounds?

27 A. Yes.

28 Q. If you would, Ms. Walker, please just explain to me
29 your opinion regarding the death penalty.

1 A. Well, in the Bible it says vengeance is mine, and
2 he will take care.

3 Q. Right.

4 A. That is my belief.

5 Q. You feel like the Bible instructs you that it's the
6 Lord's, the Lord should take care of those type of matters;
7 right?

8 A. Right.

9 Q. That is outside of your hands?

10 A. (Juror Ms. Walker nods her head.)

11 Q. Is there any instruction of law that Judge Morgan
12 could give you that would change your religious opinion
13 regarding the death penalty?

14 A. No.

15 Q. And if you were selected and sat over here in the
16 jury box, it wouldn't matter what me and Mr. Evans presented,
17 what type of facts we presented, and you couldn't weigh that
18 against the instructions that the Court gave you. It
19 wouldn't really make any difference; right?

20 A. No.

21 Q. There is nothing that he could say or do that would
22 change your opinion?

23 A. No.

24 Q. And you could not lay that opinion aside?

25 A. No.

26 BY MR. HORAN: Thank you, Ms. Walker.

27 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Ms. Sylvia J. Walker.)

28 Q. Good afternoon, Ms. Walker.

29 A. Oh, okay.

1 Q. You have just got one more to go, one more to go.

2 A. Okay.

3 Q. Ms. Walker, I am Chokwe Lumumba, and I would like
4 to ask you just a few other questions. You, of course,
5 understand that this is a case which first of all, right now
6 Mr. Flowers is presumed innocent of whatever he is charged
7 with. Is that correct?

8 A. Yes.

9 Q. Okay, and you don't have a problem with that, do
10 you?

11 A. No.

12 Q. And you understand that even all this talk about
13 the death penalty does not take us away from that, is that
14 they have to do some heavy proving to prove guilt before you
15 even think about any death penalty. Do you understand what
16 I'm saying. You understand that?

17 A. I understand that.

18 Q. Okay, and we submit that that will never happen,
19 that they will never get there; right? They will never be
20 able to prove a case to the point where that will happen. Do
21 you understand that that's--

22 A. --yes.

23 Q. --our position, and that's why we are here. That is
24 why he has pled not guilty. Do you understand that?

25 A. (No response.)

26 Q. Do you understand that?

27 A. Yes.

28 Q. Okay. Now this is what the questions, now in any
29 case that has a capital murder, not just this one, so you can

1 even put this one aside. But in any case, you know, we ask
2 these questions about the death penalty to see whether jurors
3 can go along with what the law says. All right? You
4 understand that?

5 A. Yes.

6 Q. Okay. The law never says somebody has got to give
7 the death penalty; right? There is no law that says you have
8 got to give the death penalty. Do you understand that?

9 A. Yes. I guess.

10 Q. The law says that jurors, there are certain
11 circumstances after you get over a number of hurdles, if the
12 prosecution can clear all those hurdles, first of all, they
13 have got to prove that somebody is guilty; right?

14 A. Yes.

15 Q. One hurdle; right? It's a big hurdle because it
16 has got to be beyond a reasonable doubt; right?

17 A. Yes.

18 Q. The second thing is they have got to prove if they
19 go into the sentencing phase if they get there, they have got
20 to prove that there is some reason beyond just the
21 conviction. The conviction is not enough. They have got to
22 prove that there is an aggravating circumstance is what they
23 call it; prove that there is some reason for you to even
24 consider the death penalty. Do you understand what I'm
25 saying?

26 A. Uh-hum. Yes.

27 Q. And if they don't get past that, you can't even
28 consider the death penalty; right? The law will tell you
29 you can't consider it. The next thing is that even if they

1 get past that, then if there is mitigating circumstances, if
2 there is reasons that the defense offers which shows more
3 reason for life than for death, then you still can't consider
4 the death penalty. Do you understand what I'm saying?

5 A. Yes.

6 Q. Okay. Only if they get past those three areas,
7 they do all that jumping; right. Okay, if it gets past --
8 and each time they get to a hurdle it's the jurors that
9 determine whether they get past it. Do you understand what
10 I'm saying?

11 A. Yes.

12 Q. And you as a juror have, you know, you have to make
13 up your individual mind after you consult with the other
14 jurors. You know, they are going to say their opinion to you
15 and you say your opinion to them. But you have to make up
16 your individual mind, can't anybody tell you how to vote. Do
17 you understand what I'm saying?

18 A. Yes.

19 Q. Okay. But finally, even if you get to the point
20 where death is a possibility, where the Judge will say, look,
21 if you get past this, this and that, then you can consider
22 death. Nobody is saying you have got to give it. It's a
23 question that you have got to honestly consider. Do you
24 understand what I'm saying? Along with life. You have got
25 to consider death, and you have to consider life.

26 A. Yes.

27 Q. Now I'm not putting it like that to say well, you
28 know, be slick and hang back and, you know, just say you can
29 go along with the program. That's not what I'm doing. I am

1 just presenting it to you like that to let you know that the
2 law has some appreciation for the fact that some people don't
3 agree with the death penalty, and some people do agree with
4 the death penalty; right?

5 A. Yes.

6 Q. And even though the people who don't agree with it
7 might not be satisfied with what the law's position is at
8 this point and have every bit of right to go out and raise
9 some noise to try to get the law changed; right. The law is
10 still saying that we have some sensitivity to that position;
11 right?

12 A. Right.

13 Q. That life is valuable. Because the law is saying
14 that you have got to jump this hurdle and that hurdle and
15 that hurdle; right, okay, before you can even get there. Do
16 you see what I'm saying? And then even when you get there,
17 it is up to each individual juror to determine in these
18 circumstances it should be given. Do you understand what I'm
19 saying?

20 A. Yes.

21 Q. And if the juror says, if one juror says after
22 consulting with the other jurors that it shouldn't be given,
23 then it can't be given; right? Do you understand?

24 A. Yes.

25 Q. So what I'm asking you because you have never sat
26 on a jury or had anything to do with capital--

27 A. No.

28 Q. Have you sat on a jury before at all?

29 A. No.

1 Q. So I guess what I'm asking you, the law is not just
2 trying to get one type of people here. They want, you know,
3 anybody here that can participate in the process honestly;
4 right?

5 A. Yes.

6 Q. Okay. So what we are asking you is that can you,
7 understanding what your religious beliefs is and perhaps
8 understanding that the law has some sensitivity toward it,
9 also it has sensitivity toward the people that read the Bible
10 a different way; right?

11 A. Yes.

12 Q. Because there are people who do that; right?

13 A. Yes. They interpret it differently.

14 Q. Okay, and so understanding that it has sensitivity
15 to both positions, would you be able to come in and to follow
16 the law and make a decision at every level? Do you know what
17 I'm saying? If you felt it was, first of all, they have got
18 to prove before-- it's not up to you to make a case for
19 them. They have to make a case for themselves; right? Okay,
20 for you to sit there and see, is the case there; right?

21 A. Yes.

22 Q. And then get to every level and then if any case
23 you should ever wind up getting past all those hurdles, can
24 you sit there and consider both options, death and life and
25 then make a decision which the case warrants based on your
26 own mind and conscience and your view most importantly of the
27 evidence?

28 A. I would still be against it.

29 Q. You would be against it, but could you do it and

1 could you vote your conscience, and if it was warranted, vote
2 for it?

3 A. No.

4 Q. You couldn't do that.

5 BY MR. LUMUMBA: Okay, thank you.

6 BY THE COURT: Thank you, Ms. Walker. You may
7 go outside. And that gets us to 71, Ms. Pickich.

8 (Juror Ms. Sylvia J. Walker leaves the
9 courtroom, and JUROR NUMBER 71, MS. LAURA M.
10 PICKICH, enters the courtroom.)

11 BY MR. HORAN: May I proceed, Your Honor?

12 BY THE COURT: Uh-hum.

13 INDIVIDUAL VOIR DIRE BY MR. HORAN: (Ms. Laura M. Pickich.)

14 Q. It Ms. Pickich; is that right?

15 A. Yes.

16 Q. Ms. Pickich, you indicated through the Court's
17 questioning process that you could not vote for the death
18 penalty under any circumstances; is that right?

19 A. Yes.

20 Q. Is there any instruction of law that the Court
21 could give you that would allow you to set aside your
22 conscientious scruples against the death penalty?

23 A. I have thought about it, and I just don't feel like
24 I could. I just don't think I can do that.

25 Q. Okay. I notice on your jury questionnaire that you
26 stated in your explanation that you don't think you could
27 vote yes for a death penalty for anyone because of my
28 religious beliefs. Is that why?

29 A. Yes, that is really.

1 Q. Okay, there is nothing based on anything that has
2 happened to you in the past other than your religious
3 training?

4 A. No. Strictly religious training.

5 Q. Okay. Is there any, anything that the Court could
6 tell you or any instruction of law that would make you change
7 your opinion on the death penalty and whether or not you
8 could impose it if you thought the facts warranted it?

9 A. No.

10 BY MR. HORAN: Thank you.

11 BY MR. LUMUMBA: Just a couple of questions.

12 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA: (Ms. Laura Pickich.)

13 Q. Ms., is it Pickett?

14 A. Pickich.

15 Q. Pickich, Pickich. Okay, thank you, Ms. Pickich. I
16 notice that when asked whether you, what your view was on the
17 death penalty, in your form you put generally opposed?

18 A. I did. I should have said strongly opposed. I
19 guess I have never been faced with that question.

20 Q. Right, never been faced with the question. Really,
21 I mean you have never been faced with being put in a
22 situation.

23 A. Right. That's right.

24 Q. But sometimes-- well, all I would like to do in my
25 questions is separate--

26 A. Okay.

27 Q. --what may be awesome weight of the possibility of
28 a death penalty, okay, from what you really and truly
29 believe. You understand what I'm saying?

1 A. Uh-hum.

2 Q. In other words, what and, you know, it is always
3 very imposing when somebody comes in here and says can you
4 give the death penalty, you know. And sometimes you forget
5 that the man sitting over there hasn't been convicted of a
6 single thing. You know.

7 A. Right.

8 Q. You wouldn't do that, would you?

9 A. No.

10 Q. Okay, and you wouldn't shift your focus from the
11 fact that they have to prove their case and we have come in
12 here and pled not guilty, so our position is, our submission
13 is that they are not going to be able to do that; right? Do
14 you see what I'm saying? That is the first thing you have
15 got to get past; right?

16 A. Yes.

17 Q. Is the guilt or innocence?

18 A. Right.

19 Q. Okay, and you don't have any problem with that?

20 A. No. No, I don't, not when--

21 Q. --And even talking about death penalty doesn't give
22 you a problem with that?

23 A. No.

24 Q. Okay. Now the only other thing I'm going to say is
25 that if you were only opposed as opposed to strongly opposed
26 when you sat down calmly and thought about it, you know,
27 without the weight on you, is it possible - and this is what
28 I am raising - is that maybe understanding the law's
29 appreciation for life, I mean maybe it might not be as good

1 as you would want it to be or as good as I would want it to
2 be, but its appreciation for life is somewhat built into the
3 way that the case is tried. And this is what I mean. First
4 of all, before you can even think about a death penalty,
5 there has to be a conviction; right?

6 A. Right.

7 Q. But that is not enough. That is not enough.

8 A. Right.

9 Q. Even if you go on to the sentencing phase, they
10 have got to prove something before they can-- they have to
11 prove that there is reasons for death; right, before you can
12 even consider the death penalty?

13 A. Right.

14 Q. Okay. Say they do, which is a hurdle, a big
15 hurdle, because each individual juror has to make that
16 decision. The Judge is not going to tell you what they have
17 proved. He is going to just tell you what they are required
18 to prove, and then you have got to decide whether they have
19 proved it; right?

20 A. Right.

21 Q. Okay. Then even if they do, then if there is
22 mitigating factors that the defense presents, in other words,
23 reason for life and those factors outweigh the reasons for
24 death, you still can't consider death. Do you see what I'm
25 saying?

26 A. Right.

27 Q. Okay. So only if you get past those three hurdles,
28 A) somebody gets convicted, and our position is it won't
29 happen here. But if somebody gets convicted, secondly, they

1 prove an aggravating circumstance, and thirdly, they are
2 out-- you know, if the mitigating factors don't overcome the
3 aggravating factors; okay, in that particular situation, then
4 the focus becomes the jury can consider death; right? Not,
5 the law is not that the jury has got to give death; right?
6 Do you see what I'm saying? But it is just becomes the jury
7 can consider death at that point. And only if the jurors in
8 their own conscience focused mainly on-- I mean each person
9 has his own meter; right? Okay. But you have to be focused
10 mainly on the circumstances of the case; right? In other
11 words, they want you to be driven by the circumstances,
12 whether those circumstances, you think, justify it. And I am
13 asking you given all of that, can you go along with it and
14 make that decision?

15 A. Are you saying depending on the circumstances?

16 Q. Yes.

17 A. And maybe some other circumstance?

18 Q. Yeah. Yeah.

19 A. Might I decide, could I decide a death penalty?

20 Q. Yeah.

21 A. No. I don't, I am very strongly opposed to it, and
22 I should have changed that. But the more I sat and filled
23 out that questionnaire and thought about that, I should have
24 changed that.

25 Q. Okay, thank you.

26 BY MR. LUMUMBA: I have no further
27 questions.

28 BY THE COURT: Thank you, ma'am.

29 (Juror Ms. Laura Pickich left the courtroom.)

1 **BY THE COURT:** Okay. Let's bring the jury
2 back, and I'm going to ask the spectators now, I
3 have got to have room for my jury to sit. I don't
4 mind you being in here, but you can't sit where the
5 jury is.

6 **BY MR. EVANS:** How about the cause ones? Are
7 we going to do them before?

8 **BY THE COURT:** No. I'm going to let you
9 finish your voir dire. Y'all come on.

10 (CONFERENCE AT THE BENCH WHILE THE JURY WAS
11 COMING IN BUT OUT OF THEIR HEARING AS FOLLOWS:)

12 **BY MR. EVANS:** I just thought it might cut
13 some of mine.

14 **BY THE COURT:** No, I'm going to cut y'all out
15 right now on that. These that we have talked, that
16 have now been individual voir died, that have been
17 individual voir dired on the death, there is no
18 point in going back into that at this point in
19 time.

20 **BY MR. EVANS:** With them.

21 **BY THE COURT:** Well, with them; right. If you
22 can raise some more. Now here is what my intention
23 is because of the hour. When y'all finish your
24 voir dire, then I was going to stop for the day. I
25 was going to-- then we will go over who we know we
26 are going to excuse for cause now. I'm going to
27 take, get them put back in this jury room. I will
28 bring the others jurors in here, give them their
29 instructions, and turn them loose for the night.

1 How about that? That work for everybody?

2 BY MR. EVANS: Yes, sir.

3 BY MR. FREELON: I don't understand that.

4 BY MR. LUMUMBA: He is going to let them
5 finish their voir dire, and we will start tomorrow.

6 BY THE COURT: Give y'all a fresh start.

7 END BENCH CONFERENCE

8 JURY IS PRESENT.

9 BY THE COURT: Now y'all know what I mean by a
10 short break. (Laughter.) We won't go too much
11 longer today, but we have some further questions at
12 this time; the State does. And Mr. Evans, you can
13 proceed.

14 BY MR. EVANS: Thank you, Your Honor.

15 BY THE COURT: Oh, I'm sorry. Have we got
16 everybody? Okay, let's wait until we get them.

17 (Another juror enters the courtroom.)

18 BY THE COURT: All right, Mr. Evans.

19 BY MR. EVANS: The only problem is I may not
20 remember where I was.

21 BY UNIDENTIFIED JUROR IN AUDIENCE: Uh-uh.

22 BY JUROR MS. DENISE SHILSTONE: We will remind
23 you. You were just about to say we could go home.

24 (Laughter.)

25 BY MR. EVANS: I don't have many more
26 questions, but I do have a few that I want to go
27 into, and I don't think these will take long.

28 FURTHER VOIR DIRE BY MR. EVANS:

29 In your questionnaires and in some of the questions

1 today several of y'all have made comments about having family
2 members or close personal friends that have been charged or
3 possibly convicted of crimes. I'm not going to go into those
4 because it really doesn't matter other than one question that
5 I want to ask. Is there anyone here today that because of
6 that feels that they could not be a fair and impartial
7 juror? Is there anyone that has a family member that
8 because of the fact that they may have been convicted, feels
9 well, you know, my family member went to the penitentiary,
10 and I don't like that and because of that, I'm not going to
11 be fair and impartial. I'm just going to automatically go in
12 there and do one thing or the other. Anyone at all? (No
13 response.)

14 Okay. As the Judge has kind of gone into with you,
15 he is going to be the one that makes the decision of what law
16 applies in both phases of the trial, both in the guilt phase
17 and in the sentencing phase. But you, the jury--

18 BY MR. LUMUMBA: --Judge, I would object to
19 that. The statement assumes that there will be a
20 sentencing phase which is far, far from reality
21 right now.

22 BY MR. EVANS: May I proceed, Your Honor?

23 BY MR. LUMUMBA: I am objecting to the way it
24 has been stated. I think that it is prejudicial.

25 BY THE COURT: Restate your question, Mr.
26 Evans.

27 BY MR. EVANS: I think it's a straight, exact
28 comment of the law. The judge--

29 BY THE COURT: --It may be. I just didn't

1 hear it.

2 BY MR. EVANS:

3 What the law is in the guilt phase and if we go
4 forward into the sentencing phase, the Judge will instruct
5 you as to what the law is. Does anybody have any problem
6 with that theory of law?

7 BY MR. LUMUMBA: I don't have objection to
8 that. That was not what was said. He said "if."

9 BY THE COURT: Did everybody understand that
10 question? Okay.

11 BY MR. EVANS:

12 Of course, it's our contention that we will go
13 through the first phase, and we will put on our proof. Once
14 we have done that, we feel that we will go into the second
15 phase, but in either phase regardless, what I'm trying to
16 make sure that y'all understand is the Judge is the one that
17 determines what law you must follow. Anybody have any
18 problem with that? Other-- now I know that there are some
19 of you in this panel that have stated different reasons that
20 you don't feel that you could be fair and impartial already,
21 and I'm really not addressing my questions to those jurors.
22 It's the rest of the panel.

23 Is there anyone here other than ones of you who
24 have already said there is some reason that you couldn't be
25 fair and impartial that would not follow the Judge's
26 instructions on either phase?

27 Okay, that is what the Judge does. You as jurors,
28 the ones of you that are picked on this jury, you are the
29 ones that determine the facts. And you do that by listening

1 to the evidence and viewing physical evidence. Do each of
2 y'all understand that? Anyone have any problem with it?

3 We will put witnesses on this witness chair right
4 up here. Through those witnesses we will introduce evidence,
5 and that is what you make your decisions on. That will be
6 what you make your decision on as far as guilt or innocence,
7 nothing outside this courtroom but on the evidence that you
8 hear. Does everyone understand that? Okay.

9 Once we have put that on in the first phase, if the
10 jury convicts, then we go into the second phase. We will put
11 more evidence on. Once we have put that evidence on, then
12 the Judge again will instruct y'all on what the law is. Now
13 this is going to be kind of repetitious for some of you that
14 were in here on individual voir dire, but I'm going to go
15 through it as fast as I can.

16 Once we get to that point, the Judge will have a
17 long instruction that he is going to give to the jury. The
18 jury at that point will go down through that instruction. Of
19 course, at that point he will have already been convicted.
20 You will only be considering what the appropriate penalty
21 would be at that point. So the jury will follow that
22 instruction step by step to determine what the appropriate
23 penalty should be. In that instruction it is several
24 different sections in it. If you don't get past one section,
25 you can't go on to another, so you take it one section at a
26 time.

27 The first part of that instruction will tell the
28 jury that the State must prove one particular element for it
29 to go forward. That particular part that we must prove has

1 four separate parts to it: That the Defendant killed
2 someone; that the Defendant attempted to kill someone; that
3 the Defendant anticipated lethal force would be used. There
4 are four of them. The jury at that point will have to make a
5 determination. You stop everything else at that point and
6 decide that. Did the State prove one or all of these? We
7 have to prove at least one of those to you or the jury can't
8 go any further.

9 If we prove those to you, you write them in. The
10 Judge is going to tell you what to do with them, how to
11 write the verdict out. But you just take it step by step.
12 It is real simple. It is complicated in the fact that you
13 have to go through steps, but it's not that hard to do. The
14 jury foreman will write out which of those we have proven.
15 Once we have proven any of those, you go on to the next
16 phase.

17 In the next phase the Court will tell you what the
18 law in Mississippi considers aggravating circumstances. It
19 will be a little clearer when you get to that point and read
20 the instruction, but aggravating circumstances are the
21 reasons that the State of Mississippi authorizes the death
22 penalty as a possible punishment. You will look at that.
23 There will be one or two there. Again, the jury stops
24 everything they are doing at that point and looks at those.
25 Did the State prove these? The jury will make that
26 decision. The jury determines that we have proven the
27 aggravating factor or factors. Then you write that in where
28 the Judge tells you to write it in, and you go on to the next
29 step.

1 The next step - and you will have all this in front
2 of you to read. The next step is mitigating factors. That
3 is any reason that the defense may want to put on for a life
4 sentence as opposed to the death penalty. Those will be
5 listed for you, what to consider. The jury at that point
6 will stop everything again and go through those that the
7 Judge gives them. You will look at those.

8 Then you have a kind of a balancing test you have
9 to do. If the mitigating factors or reasons not to give the
10 death penalty outweigh the aggravating factors or reasons to
11 give the death penalty, then you just return a life
12 sentence. If the mitigating factors do not outweigh the
13 aggravating factors, you may go forward and consider the
14 death penalty.

15 Then at that point by that instruction and by your
16 deliberations, the Court is telling you that the death
17 penalty is a possible penalty that you can reach. Then you
18 just simply make a decision of which one to give.

19 Do each of y'all understand though, as we kind of
20 went into a little bit earlier, this is not a situation where
21 at this point anybody could automatically say, yeah, I could
22 do this or I could not do that because you have to follow the
23 law. And the law specifically tells you step by step how to
24 go through these things. Is there anyone here that would not
25 follow the Court's instructions and would not go through
26 those steps? (No response).

27 This is another question that we usually, I think
28 sometimes the Judge goes into it. I don't believe he did
29 this time. It really doesn't make any difference unless it

1 would affect a juror. How many of y'all are related to other
2 prospective jurors that are sitting out here on the panel?
3 Anyone?

4 Okay, number 46 and number 55. Are y'all related
5 to each other?

6 A. (BY JUROR 46, MR. PERRY J. TAYLOR) Father-in-law.

7 Q. Your father-in-law is number 55?

8 A. Right.

9 Q. All right, is there anything about that that would
10 affect either one of you?

11 A. (Both Jurors 46, Mr. Taylor, and 55, Mr. Sallis,
12 shake their heads.)

13 Q. And the way I hear this question asked a lot, if
14 y'all were both picked on the jury, and I will start with
15 you; you are number 46?

16 A. (BY JUROR 46, MR. PERRY J. TAYLOR) Yes.

17 Q. If you were back there, would you make up your own
18 mind as to what the evidence is and not be influenced by a
19 relative?

20 A. Yes.

21 Q. Okay, and number 56?

22 **BY THE COURT:** 55.

23 **BY MR. EVANS:** 55.

24 Q. Mr. Sallis, I will ask you basically the same
25 question. Since y'all are relatives, if y'all both ended up
26 on this jury panel, are you telling us that you would make
27 your decision based on the evidence as you saw it and not let
28 your relative influence you?

29 A. (BY JUROR 55, MR. OTHA BELL SALLIS) Correct.

1 Q. Now again, and this-- I don't want to sound like
2 I'm contradicting myself, but this is the law. The law is
3 that each of you if picked as jurors will make your own
4 decision as to guilt or innocence, and if we go into the
5 second phase, as to what penalty is proper. But the law says
6 that you should consult with other jurors before making that
7 decision.

8 Is there anyone here today and again, I know some
9 of you have already stated different reasons that you
10 shouldn't serve, but other than those, is there anyone else
11 here today that feels that they could not listen to the
12 evidence and make a decision based on the evidence in the
13 case? Anyone at all? (No response.)

14 Now again, I am not asking any of the death penalty
15 questions, I'm not asking any of them to the ones that came
16 in on individual voir dire. These are for the rest of the
17 panel. Is there anyone other than the ones that have
18 answered that have any close friends or relatives that are
19 definitely opposed to the death penalty? (No response).

20 The burden of proof is always on the State of
21 Mississippi. We accept that burden. That is what the law
22 is, and that's the way it should be. Is there anyone here
23 today though that would put a higher burden of proof on us
24 just because this is a capital case that could possibly carry
25 the death penalty?

26 The reason I ask it like that, the burden of proof
27 is the same on a capital case as it would be on a grand
28 larceny or burglary or anything else. The burden is not any
29 higher on us in a capital murder case just because it is

1 capital murder. Is there anyone here that would require of
2 us a higher burden because this is a capital case?

3 When we go through these, I think it is for you to
4 know that if we go into the sentencing phase, the Judge will
5 instruct you that you must select from the ones that are back
6 there, the twelve jurors that are back there, a foreman.
7 That foreman by law will be required to sign the form of the
8 verdict. Is there anyone here today that feels that, well,
9 if I had to actually put my signature down there to it, I
10 couldn't do it; I couldn't serve? Anyone here that that
11 would affect? (No response.)

12 And as kind of a follow up, is there anyone here
13 other than the ones that have already stated reasons that
14 know of any reason that they could not be a fair and
15 impartial juror? (No response.)

16 BY MR. EVANS: Tender the panel, Your Honor.

17 BY THE COURT: Ladies and gentlemen, the State
18 has done their voir dire, and because of the hour
19 and all, we are going to start with the Defense
20 part of the voir dire in the morning. I have got a
21 couple of things I have got to do before I let you
22 go. If y'all will bear with me just a few more
23 minutes, then I'm going to let you go for the
24 night. I have some instructions for you concerning
25 that when I bring you back in here. I'm going to
26 ask if the jurors would step out of the room for
27 just a few minutes.

28 (OFF THE RECORD WHILE THE JURORS LEFT THE
29 COURTROOM.)

1 **BY THE COURT:** Okay, gentlemen. I'm going to
2 give you the ones that I have got for cause first
3 that said that they could not be fair and
4 impartial. If you have any disagreement with the
5 ones I say, you let me know; okay?

6 **BY MR. LUMUMBA:** If you will wait just one
7 second, Judge. Let me find my sheet. (Pause)
8 Okay, Judge.

9 **BY THE COURT:** Okay, I have number 1; I have
10 number 7; I have number 14; I have number 22,
11 number 24, number 29, number 47.

12 **BY MR. EVANS:** One second, Judge, if you don't
13 mind. (Pause) Okay, Judge, I'm sorry.

14 **BY THE COURT:** Okay. Number 51, number 65,
15 number 66, number 68, and number 74. All of those
16 people stated subject to my questions that they
17 could not be fair and impartial. They had
18 different reasons, some of them did, but they said
19 that. Any objection to those for cause?

20 **BY MR. LUMUMBA:** I have no objection.

21 **BY MR. HORAN:** Judge, what was the reasoning
22 behind number 24, Ms. Bailey?

23 **BY THE COURT:** Mr. Horan, I will be honest
24 with you. I would have to just go back and pull
25 the record on it. All of them that said that they
26 could not be fair and impartial I marked at that
27 time with a "C" by them.

28 **BY MR. EVANS:** That is all right. I have a
29 "C" by her too.

1 BY MR. LUMUMBA: She did say she couldn't be
2 fair and impartial.

3 BY THE COURT: Okay. Now before we get into
4 the death part of it, any of y'all have any for
5 cause other than the death qualification?

6 BY MR. EVANS: Just one second, Your Honor.

7 BY THE COURT: Well, wait a minute. I don't
8 want to do it that way because he has not had a
9 chance to voir dire.

10 BY MR. LUMUMBA: Right, right.

11 BY THE COURT: That wouldn't be right.

12 BY MR. LUMUMBA: Right, right.

13 BY MR. HORAN: Did you say 43?

14 BY MR. EVANS: You want to do just the death
15 penalty?

16 BY THE COURT: Let's do the ones that we have,
17 the eleven that have been voir dired.

18 BY MR. EVANS: All right, sir.

19 BY MR. LUMUMBA: Yeah.

20 BY MR. EVANS: Do you want to go ahead and
21 give us yours on those?

22 BY MR. LUMUMBA: I think the appropriate thing
23 would be to do the ones, in my view, would be to do
24 the ones that we can agree on since I haven't had a
25 chance to voir dire.

26 BY THE COURT: Oh, absolutely. We are going
27 to do that--

28 BY MR. EVANS: --He voir dired the ones on the
29 death penalty.

1 **BY THE COURT:** Yeah, that's what we are
2 talking about. We are talking about the eleven
3 that we voir dired.

4 **BY MR. LUMUMBA:** Yeah, yeah. I think I can
5 agree on some of those, but what I'm saying--

6 **BY MR. EVANS:** --That is the only ones we are
7 doing right now.

8 **BY MR. LUMUMBA:** All right, okay. But anyway,
9 so we are agreeing on the ones that you just called
10 before.

11 **BY THE COURT:** Right.

12 **BY MR. LUMUMBA:** Okay.

13 **BY THE COURT:** Now.

14 **BY MR. EVANS:** Do you want to go ahead and
15 give us the ones that you have got for cause on--

16 **BY THE COURT:** --Well, I think really to tell
17 you the truth, I think the appropriate way would be
18 for y'all to tell me which ones you have for cause,
19 and then they will have some.

20 **BY MR. EVANS:** All right, sir. We have number
21 2.

22 **BY THE COURT:** All right, let's just go one at
23 a time. All right. What is your response to
24 that?

25 **BY MR. LUMUMBA:** Number 2 is Eva Green.
26 Judge, I am going to agree that she had a strong
27 position against the death penalty. I am fighting
28 this eternal battle against that being sufficient
29 cause to exclude a juror. So I, you know--

1 **BY THE COURT:** --I think you made your record
2 on it.

3 **BY MR. LUMUMBA:** Yeah, I made my record, so
4 I'm not, I don't want to be put in a position I
5 have got to agree she should be excluded, but I'm
6 not arguing with the facts that is on the record.

7 **BY THE COURT:** Okay. I'm going to excuse her
8 for cause then. And I understand where you're
9 coming from on the others, Mr. Lumumba.

10 **BY MR. EVANS:** Number 4.

11 **BY THE COURT:** Same position?

12 **BY MR. LUMUMBA:** Yeah, she had basically the
13 same position if I remember right.

14 **BY THE COURT:** Okay.

15 **BY MR. EVANS:** Number 5.

16 **BY MR. LUMUMBA:** Wait, hold it, hold it. My
17 partner had something else.

18 (Pause while Defendant's Counsel confer
19 briefly.)

20 **BY MR. LUMUMBA:** Well, our position on her is
21 we would voice a position on her because I am told
22 that she kept using the term "don't think," "don't
23 think," and she never really committed herself to
24 the position. She didn't seem to be as firm. So
25 that would be our objection to her.

26 **BY THE COURT:** I think she met the test. I'm
27 not going to excuse her for cause. Okay.

28 **BY MR. EVANS:** Which one?

29 **BY THE COURT:** 5.

1 BY MR. EVANS: Oh, okay. I thought they were
2 still talking about 4.

3 BY THE COURT: No. 4 I have excused for
4 cause.

5 BY MR. EVANS: All right.

6 BY MR. LUMUMBA: But 5 you are not going to
7 excuse. Okay.

8 BY MR. EVANS: Number 23.

9 BY THE COURT: Same position, Mr Lumumba?

10 BY MR. LUMUMBA: 23. Is that the next one?

11 BY THE COURT: Ms. McClelland.

12 BY MR. LUMUMBA: Ms. McClelland, yeah, I would
13 take the same position with Ms. McClelland I have
14 taken on the other ones.

15 BY THE COURT: Okay. I think at the end she
16 became definite on her answer, and I excuse her for
17 cause.

18 BY MR. EVANS: Number 43.

19 BY MR. LUMUMBA: If you can refresh my
20 recollection.

21 BY THE COURT: She was the lady up here, I
22 believe she had on a blue top, and she was very
23 definite in her opinion.

24 BY MR. LUMUMBA: Oh, yeah.

25 BY THE COURT: Same position?

26 BY MR. LUMUMBA: Yeah, same position. She is
27 not the one that changed from her form? She is not
28 the one that changed from her form.

29 BY THE COURT: No. The one that wanted to go

1 from general to strong?

2 BY MR. LUMUMBA: Right.

3 BY THE COURT: She is later.

4 BY MR. LUMUMBA: Okay. Okay.

5 BY THE COURT: But this lady was very adamant
6 about--

7 BY MR. LUMUMBA: --Well, I would have the same
8 position as to why she shouldn't be excused.

9 BY THE COURT: Okay. I'm going to excuse her
10 for cause.

11 BY MR. LUMUMBA: That is number 43?

12 BY THE COURT: Uh-huh.

13 BY MR. EVANS: The next one would be number
14 49.

15 BY THE COURT: This was the lady that had
16 religious scruples - long hair, pony tail.

17 BY MR. LUMUMBA: Yeah, I remember. The same
18 position.

19 BY THE COURT: Okay, I think she had a
20 definite position too. She is excused for cause.

21 BY MR. EVANS: 56 is next.

22 BY MR. HORAN: She is the one that stated
23 affirmatively, at the very end the Court asked her
24 affirmatively, and she said no, she could not
25 impose the death penalty.

26 BY MR. LUMUMBA: Well, Judge, I would have to
27 voice a stronger objection to that one because she
28 did go back and forth on it. But in her position
29 on the form is that she strongly supported it. I

1 don't think she is settled yet, you know, where she
2 is, and I think that we should at least have until
3 the end of the voir dire at least until I finish
4 asking questions. I would have more of an
5 objection with her because she did at one point
6 actually said she could go with the law. She at
7 another point said, and actually her point wasn't
8 really clear coming out of the stands, I mean
9 coming out of the seats.

10 **BY THE COURT:** My opinion is she was very
11 definite in what she did, but I will retain her
12 until we get completely through with the voir dire,
13 and you can renew your objection.

14 **BY MR. LUMUMBA:** Okay.

15 **BY THE COURT:** Did I say voir dire? You got
16 me doing it.

17 **BY MR. LUMUMBA:** What is it, Judge?

18 **BY THE COURT:** I don't know. I just always
19 called it voir dire. You are probably right.

20 **BY MR. LUMUMBA:** I don't know.

21 **BY THE CLERK:** I think either way is correct.

22 **BY THE COURT:** Yeah, I have heard it both
23 ways.

24 **BY MR. EVANS:** The next one will be number
25 61.

26 **BY THE COURT:** Okay, that is Ms. Walker. Ms.
27 Walker never did get to the death penalty thing.
28 She said that she had a religious belief that would
29 prohibit her from passing judgment in any case.

1 BY MR. LUMUMBA: Yeah. Well, that is the same
2 position as I had on the other ones.

3 BY THE COURT: Okay. I'm going to excuse 61
4 for cause.

5 BY MR. EVANS: The next one will be number 71.

6 BY THE COURT: And that was the last lady who
7 I believe also had religious beliefs.

8 BY MR. EVANS: Yes, sir.

9 BY MR. LUMUMBA: Judge, is that the last one
10 that was up here?

11 BY THE COURT: Yes, sir.

12 BY MR. LUMUMBA: Yeah, same position.

13 BY THE COURT: Okay. I'm going to excuse her
14 for cause. Okay.

15 BY MR. LUMUMBA: Can we go back over?

16 BY THE COURT: Yeah, I know you have got a
17 couple at least.

18 BY MR. LUMUMBA: Oh, yeah. The gentleman,
19 Mr., 31-- I'm not necessarily taking these in
20 order, but 31 is Maynard.

21 BY THE COURT: Right.

22 BY MR. LUMUMBA: I would ask that he be
23 excused for cause. He clearly showed that he does
24 not really-- he is not ready to follow the burden
25 of proof which is that we would have to prove that
26 the death penalty should not be imposed as opposed
27 to them proving it should be.

28 BY MR. HORAN: Your Honor, that is basically
29 the instruction is going to tell them that. The

1 mitigating--

2 BY MR. EVANS: --He said he could follow the
3 Court's instructions.

4 BY THE COURT: Yeah, but I listened to him and
5 listened to him and listened to him, and Mr.
6 Maynard is predisposed, and I'm going to excuse
7 him.

8 BY MR. LUMUMBA: And on the death penalty
9 question I would also raise it as to Mr., the other
10 gentleman that we brought in here. What was his
11 name?

12 BY MR. HORAN: Patrick Connor, number 40.

13 BY THE COURT: Number 40.

14 BY MR. LUMUMBA: Number 40. I think he was
15 very clear in the audience, and Counsel did a good
16 job of working with him, but then in the final
17 analysis I think he basically pretty much admitted
18 that he would give the death penalty under any
19 circumstances.

20 BY THE COURT: I'm going to excuse him for
21 cause. Okay.

22 BY MR. EVANS: Your Honor, just for the record
23 I would like to object to that because I think he
24 stated he could follow the Court's instructions,
25 and I think under the law in Mississippi if anybody
26 follows the law, then they consider the death
27 penalty as an appropriate punishment.

28 BY THE COURT: I agree with that, but that is
29 not all of what he said.

1 BY MR. HORAN: We would object to Mr. 31 too,
2 Mr. Maynard, for the record.

3 BY THE COURT: The objection is noted.

4 BY MR. LUMUMBA: Okay, can we go back over--
5 now those are the only ones we really covered. Can
6 we go back over the ones that have been excluded
7 and make sure I have got it right?

8 BY THE COURT: Yeah. I am going to go by
9 number, okay?

10 BY MR. LUMUMBA: Okay.

11 BY THE COURT: 1, 2, 4, 7, 14, 22, 23, 24, 29,
12 31, 40--

13 BY MR. LUMUMBA: --Hold it, Judge.

14 BY MR. EVANS: I can't keep up either.

15 BY MR. LUMUMBA: You are going fast there.
16 I'm not a clerk.

17 BY THE COURT: And it's getting late, boys.

18 BY MR. LUMUMBA: The last one I got was 22,
19 right?

20 BY THE COURT: Okay, then 23, 24.

21 BY MR. LUMUMBA: Okay, I got that.

22 BY THE COURT: 29, 31, 40, 43, 47, 49, 51, 61,
23 65, 66, 68, 71, and 75 [sic]. That conform to
24 y'all's list?

25 BY MR. LUMUMBA: 74.

26 BY THE CLERK: I have 74.

27 BY THE COURT: I thought I said 74, did I not?
28 What did I say? 75? I'm sorry; I have got 74.
29 That's right. Okay. Ron-- are y'all in agreement

1 with what I just said as far as being the numbers?

2 BY MR. LUMUMBA: Yes.

3 BY THE COURT: If you will, take my list; I
4 have marked them on here. You may have too, but I
5 have got them marked here. Take those jurors and
6 take them back to the jury room for me and tell
7 them we will be right with them. You can bring the
8 rest of them in.

9 JURORS ENTER THE COURTROOM except for the
10 numbers stated previously.

11 BY THE COURT: Have we got everybody? I'm
12 going to call the names off-- I mean call some
13 numbers off. If I call your number off, hold up
14 your hand. Number 1, number 2, number 4, number 7,
15 number 14, number 22, number 23, number 24, number
16 29, number 31, number 40, number 43, number 47,
17 number 49, number 51, number 61, number 65, number
18 66, number 68 -- which is that? Number 66?

19 BY JUROR 66, MR. NATHAN O. WEBB: Yes, sir.

20 BY THE COURT: Mr. Webb, you need to come up
21 here and go with the constable-- I mean the
22 bailiff, excuse me.

23 (Juror 66, Mr. Webb leaves the courtroom.)

24 BY THE COURT: Number 68, number 71, and
25 number 74. All right, now that I have got y'all
26 seated again, I'm going to get you to stand up, and
27 we have got an oath we want to give you, and the
28 important part of this is it's what I get you paid
29 with. So if y'all will stand up and let her give

1 you one more oath.

2 BY THE CLERK: Raise your right hands. Do you
3 and each of you solemnly swear or affirm you will
4 well and truly try all issues and execute all writs
5 of inquiry that may be submitted to you by the
6 Court during the present week and true verdicts
7 render according to the law and the evidence so
8 help you God?

9 BY ALL JURORS: I do.

10 BY THE COURT: You may be seated. I am
11 getting ready to release you until 9 o'clock in the
12 morning, and I need for you to all be here at 9:00
13 so we can try to get started promptly. You have
14 still heard nothing about this case from the
15 witness stand, so you are not to form any opinions
16 about this case whatsoever nor are you to discuss
17 it with anybody, including amongst yourselves. You
18 are not even to talk about it.

19 When you get home tonight, some of you are
20 going to have your family, and they are going to
21 say, "Well, what have you been doing all day?" And
22 you say, "I have been up at the courthouse, but
23 Judge Morgan said I couldn't tell you anything
24 else." When you get through with this, you can
25 tell them anything you want to, but you can't talk
26 to them about it now. You can't allow anybody to
27 come up to you and talk to you about it.

28 If anybody should try to contact you overnight
29 about this case, I want to know that the first

1 thing in the morning, and I will deal with it. If
2 they do do that, you do not listen to them. You
3 hang up the phone or get away from them if they are
4 around you. I don't think that is going to happen,
5 but if it does, I have got to know about it.

6 You should not watch news coverage of this
7 event nor should you read news coverage of this
8 event. There again, I do not think from just my
9 observation of what has gone on in the courthouse,
10 I do not think you are going to see that, but if
11 you do, you are not to pay any attention to it.

12 Do either of lawyers have any further
13 instructions for the jury?

14 BY MR. EVANS: None from the State, Your
15 Honor.

16 BY MR. LUMUMBA: Your Honor, can we approach?

17 BY THE COURT: Sure.

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
19 THE JURY AS FOLLOWS:)

20 BY MR. LUMUMBA: There was a reporter in here
21 today.

22 BY THE COURT: She is from Winona, and that
23 paper will not come out until Wednesday.

24 BY MR. LUMUMBA: No, I'm not talking about
25 her. There was a gentleman that came in and talked
26 to Mr.--

27 BY MR. EVANS: --Yeah. Somebody came in right
28 after lunch and asked both of us how to get in
29 touch with us.

1 BY MR. LUMUMBA: Yeah.

2 BY MR. EVANS: I don't know who he is with.

3 BY MR. LUMUMBA: So I am just telling you
4 that--

5 BY THE COURT: --There might be some, okay.
6 Do you want any further instructions other than
7 what I have given?

8 BY MR. LUMUMBA: Well, I think you did all you
9 can, but I am just making you aware.

10 BY THE COURT: Okay.

11 BY MR. EVANS: Did you tell them not to read
12 or--

13 BY MR. LUMUMBA: Not to read. I think he--

14 BY THE COURT: Yeah. I will say it again.

15 END BENCH CONFERENCE.

16 BY THE COURT: My understanding is that there
17 might have been some news media here from the
18 coast. If they did, I didn't know about it. I'm
19 going to ask, if you will, not to read any
20 newspaper until we get through with this voir dire,
21 and we will be through with it tomorrow, I am
22 confident. And I just as soon you did not listen
23 to or watch any television although I didn't see
24 any cameras, so I don't think anybody is going to
25 be on television. But just do not expose yourself
26 to any media coverage of this because you have to
27 remain fair and impartial. You have to be in a
28 position to decide this case from this witness
29 stand, from those, that evidence and those facts

1 that come from that witness stand.

2 Now the final instruction I have got is before
3 you had gotten a number to call in to see whether
4 you had to be here and all like that. If you have
5 still got that number, whatever you do, do not call
6 that number tonight. There are instructions on
7 there, but they are for other jurors in other
8 cases. My instructions to you is that we will
9 begin in the morning promptly at 9 o'clock.

10 With those instructions, I will see you then,
11 and I appreciate y'all's patience today.

12 BY A JUROR IN AUDIENCE: Do we take our
13 numbers?

14 BY THE COURT: No, just leave them in your
15 seats. That will be fine.

16 JURY LEFT THE COURTROOM. MR. FREELON AND THE
17 DEFENDANT BOTH LEFT THE COURTROOM.

18 BY THE COURT: Wait a minute. Let's make sure
19 I don't have any jurors in here. Okay, and the
20 Defendant is not in here.

21 BY MR. LUMUMBA: What is it you wanted to talk
22 about?

23 BY MR. HORAN: About the motion in limine.
24 Are you going to put on any evidence in the morning
25 on these motions in limine? Is there anybody that
26 we need to have any rebuttal witnesses, or are we
27 just going to take off in the morning or what?

28 BY MR. LUMUMBA: No, I think the motion in
29 limine that we have I think is based upon the

1 transcripts of the last trial which you all should
2 be fairly well familiar with.

3 **BY THE COURT:** Of course, I'm not going to
4 tell either one of you how to put your case on one
5 way or another. Mr. Lumumba indicated to me that
6 the primary purpose of it was to make his record on
7 that.

8 **BY MR. HORAN:** So we are not--

9 **BY THE COURT:** But I'm not committing one way
10 or another now. I just sit up here.

11 **BY MR. LUMUMBA:** I understand.

12 **BY MR. HORAN:** That is it then.

13 **BY THE COURT:** Okay. All right, gentlemen.

14 **BY MR. HORAN:** What time we got to be here in
15 the morning?

16 **BY THE COURT:** We have got to be here at 9
17 o'clock. Everybody is on the coast, aren't they,
18 Mr. Lumumba?

19 **BY MR. LUMUMBA:** Yeah, we are here.

20 **BY THE COURT:** Okay. I will see y'all at 9:00
21 then.

22 COURT WAS ADJOURNED ON MARCH 22, 1999, AT
23 APPROXIMATELY 6:15 P.M.

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1 (COURT WAS REOPENED ON TUESDAY, MARCH 23,
2 1999, AND WITH THE COURT, ALL COUNSEL, THE DEFENDANT, AND THE
3 JURY PANEL ALL PRESENT, THERE WAS THE FOLLOWING:)

4 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
5 THE JURY AS FOLLOWS:)

6 BY MR. HORAN: Mr. Cole is supposed to have
7 his questionnaire with him.

8 BY THE COURT: The one that didn't have a
9 questionnaire that--

10 BY MR. LUMUMBA: Oh.

11 BY THE COURT: --got here maybe by mistake.

12 BY MR. LUMUMBA: Okay.

13 BY MR. HORAN: See if we can get that
14 questionnaire before we start.

15 BY THE COURT: Okay.

16 END BENCH CONFERENCE.

17 BY THE COURT: Mr. Cole, Mr. Tyron Cole. Have
18 you got your questionnaire with you?

19 (Juror 27, Mr. Tyron D. Cole, holds up his
20 questionnaire.)

21 BY THE COURT: All right. Will one of y'all
22 get it for me, please.

23 (Questionnaire taken to be copied.)

24 BY THE COURT: Let me make sure I have got
25 everybody. Number 3, Mr. Moleta.

26 BY JUROR MR. MOLETA: Here.

27 BY THE COURT: Number 5, Ms. Yarbrough.

28 BY JUROR MS. YARBROUGH: Here.

29 BY THE COURT: Number 6, Ms. Ladner.

1 BY JUROR MS. LADNER: Here.
2 BY THE COURT: Number 8, Ms. Turner.
3 BY JUROR MS. TURNER: Here.
4 BY THE COURT: Number 9, Ms. O'Neal.
5 BY JUROR MS. O'NEAL: Here.
6 BY THE COURT: Number 10, Ms. Cook.
7 BY JUROR MS. COOK: Here.
8 BY THE COURT: Number 11, Ms. Warden.
9 BY JUROR MR. WARDEN: Here.
10 BY THE COURT: I'm sorry, Mr. Warden; excuse
11 me. Number 12, Ms. Lott.
12 BY JUROR MS. LOTT: Here.
13 BY THE COURT: Number 13, Ms. Young.
14 BY JUROR MS. YOUNG: Here.
15 BY THE COURT: Number 15, Mr. Overstreet.
16 BY JUROR MR. OVERSTREET: Here.
17 BY THE COURT: Number 16, Mr. Dobson.
18 BY JUROR MR. DOBSON: Here.
19 BY THE COURT: Number 17, Ms. Finch.
20 BY JUROR MS. FINCH: Here.
21 BY THE COURT: Number 18, Ms. Weiss.
22 BY JUROR MS. WEISS: Here.
23 BY THE COURT: Number 19, Ms. Gray.
24 BY JUROR MS. GRAY: Here.
25 BY THE COURT: Number 20, Ms. Ballman.
26 BY JUROR MS. BALLMAN: Here.
27 BY THE COURT: Number 21, Ms. Partridge.
28 BY JUROR MS. PARTRIDGE: Here.
29 BY THE COURT: Number 25, Ms. Pell.

1 BY JUROR MS. PELL: Here.

2 BY THE COURT: Number 26, Ms. Lee.

3 BY JUROR MS. LEE: Here.

4 BY THE COURT: Number 27, Mr. Cole.

5 BY JUROR MR. COLE: Here.

6 BY THE COURT: Number 28, Mr. Crockett.

7 BY JUROR MR. CROCKETT: Here.

8 BY THE COURT: Number 30, Mr. Galle-- Ms.

9 Galle.

10 BY JUROR MS. GALLE: Here.

11 BY THE COURT: Number 32, Mr. Davis.

12 BY JUROR MR. DAVIS: Here.

13 BY THE COURT: Number 33, Mr. Houston.

14 BY JUROR MR. HOUSTON: Here.

15 BY THE COURT: Number 34, Mr. Davis.

16 BY JUROR MR. DAVIS: Here.

17 BY THE COURT: Number 35, Mr.-- I'm no better
18 than Gayle was.

19 BY JUROR MR. ECHAVARRIA: Here.

20 BY THE COURT: All right. Number 36, Mr.

21 Lackey.

22 BY JUROR MR. LACKEY: Here.

23 BY THE COURT: Number 37, Ms. Hall.

24 BY JUROR MS. HALL: Here.

25 BY THE COURT: Number 38, Mr. Thurston.

26 BY JUROR MR. THURSTON: Here.

27 BY THE COURT: Number 39, Mr. Franklin.

28 BY JUROR MR. FRANKLIN: Here.

29 BY THE COURT: Number 41, Ms. Kreeger.

1 BY JUROR MS. KREEGER: Here.

2 BY THE COURT: Number 42, Ms. Shilstone.

3 BY JUROR MS. SHILSTONE: Here.

4 BY THE COURT: Number 44, Mr. Cooper.

5 BY JUROR MR. COOPER: Here.

6 BY THE COURT: Number 45, Ms. Anderson.

7 BY JUROR MS. ANDERSON: Here.

8 BY THE COURT: Number 46, Mr. Taylor.

9 BY JUROR MR. TAYLOR: Here.

10 BY THE COURT: Number 48, Ms. Ladner.

11 BY JUROR MS. LADNER: Here.

12 BY THE COURT: Number 50, Ms. Young. Number
13 50, Ms. Young.

14 (No response from juror 50.)

15 BY THE COURT: Okay. Number 52, uh--

16 BY JUROR MS. NEIL: I am here.

17 BY THE COURT: Okay, all right. I'm sorry.

18 Ms. Neil.

19 BY JUROR MS. NEIL: It's an easy one. I was
20 wondering what the problem was.

21 BY THE COURT: Number 53, Ms. Smith.

22 (No response.)

23 BY THE COURT: Number 54, Ms. Hoda.

24 BY JUROR MS. HODA: Here.

25 BY THE COURT: Number 55, Mr. Sallis.

26 BY JUROR MR. SALLIS: Here.

27 BY THE COURT: Number 56, Ms. Blakely.

28 BY JUROR MS. BLAKELY: Yes.

29 BY THE COURT: Number 57, Ms. Hilton.

1 BY JUROR MS. HILTON: Here.

2 BY THE COURT: Number 58, Ms. Barnes.

3 BY JUROR MS. BARNES: Here.

4 BY THE COURT: Number 59, Ms. Trotter.

5 BY JUROR MS. TROTTER: Here.

6 BY THE COURT: Number 60, Mr. Seymour.

7 BY JUROR MR. SEYMOUR: Here.

8 BY THE COURT: Number 62, Mr. Dedeaux.

9 BY JUROR MR. DEDEAUX: Here.

10 BY THE COURT: Number 63, Mr. James.

11 BY JUROR MR. JAMES: Here.

12 BY THE COURT: Number 64, Ms. Melvin.

13 BY JUROR MS. MELVIN: Here.

14 BY THE COURT: Number 67, is that Mr. Swanier

15 or Ms.?

16 BY JUROR MS. SWANIER: That would be Mrs.

17 Swanier.

18 BY THE COURT: Mrs. Swanier, okay.

19 BY JUROR MS. SWANIER: And I am present.

20 BY THE COURT: All right, thank you, ma'am.

21 Mr. Hamiter, number 69.

22 BY JUROR MR. HAMITER: Here.

23 BY THE COURT: Number 70, that is Ms. Shook,

24 isn't it?

25 BY JUROR MS. SHOOK: Here.

26 BY THE COURT: Right. Number 72, Ms.

27 Abernathy.

28 BY JUROR MS. ABERNATHY: Here.

29 BY THE COURT: Number 73, Ms. Beeson.

1 BY JUROR MS. BEESON: Here.

2 BY THE COURT: Number 75, Ms. Collins-- Mr.
3 Collins.

4 BY JUROR MR. COLLINS: Here.

5 BY THE COURT: Okay. Ladies and gentlemen, I
6 have got to find these other two jurors before we
7 can get started.

8 (MR. LUMUMBA APPROACHED THE BENCH.)

9 BY MR. LUMUMBA: Judge, I'm going to run to
10 the back. I don't have these. She may not have
11 done number 50, but I don't have questionnaires.

12 BY THE COURT: You are talking about
13 questionnaire? Okay, looks like we are going to
14 have a minute. Go ahead.

15 BY MR. LUMUMBA: Okay, so I will just go on?

16 BY THE COURT: Sure.

17 END BENCH CONFERENCE.

18 BY THE COURT: Yes, sir. Yeah, you can. You
19 can come up here.

20 (A juror approaches the bench.)

21 BY THE COURT: Mr. Evans, Mr. Freelon. Juror
22 number 11 wants to see me just a second.

23 (CONFERENCE AT THE BENCH WITH JUROR 11, MR.
24 WINSTON O. WARDEN, PRESENT:)

25 BY JUROR 11, MR. WARDEN: I don't know how you
26 feel about having somebody on the jury with the
27 flu. I thought I could shake this joker last
28 night, but it didn't shake too swift.

29 BY THE COURT: Well, hang on a little bit and

1 let me see where I am, okay?

2 BY JUROR MR. WARDEN: All right.

3 END BENCH CONFERENCE.

4 (Off the record briefly while waiting on the
5 two absent jurors until Mr. Horan approached the
6 bench for the following:)

7 BY MR. HORAN: They have got jurors across the
8 hall. They have had three show up.

9 BY THE COURT: That were supposed to be here
10 yesterday?

11 BY MR. HORAN: That's what she is telling me.

12 BY THE COURT: No, I need for them to stay
13 because I don't know whether or not we are going to
14 have enough jurors.

15 BY MR. HORAN: I will go tell her. They sent
16 them across over here to this office.

17 BY THE COURT: Okay, who are you talking to?

18 BY MR. HORAN: One of the deputies. I walked
19 in to make copies. She said they had three
20 jurors--

21 BY THE COURT: --Okay, let me ask whoever it
22 was that you talked to to come see me just a
23 second.

24 END BENCH CONFERENCE.

25 BY THE COURT: Okay. Ms. Young came in?

26 BY JUROR MS. YOUNG: Yes.

27 BY THE COURT: Okay. And how about Ms.
28 Smith?

29 BY JUROR MS. SMITH: Yes.

1 **BY THE COURT:** All right, we are set. Bear
2 with me just a minute. I have got to talk to one
3 of the clerks.

4 (The Court left the bench briefly and went
5 into the Clerk's office. Upon his return, there
6 was the following in open court with all Counsel,
7 the Defendant, and the jury present:)

8 **BY THE COURT:** All right, Mr. Lumumba.

9 BY MR. LUMUMBA: We ready, Judge?

10 **BY THE COURT:** You can turn it around if you
11 want to.

12 (NOTE: Referring to the podium.)

13 BY MR. LUMUMBA: Good morning, everybody.

14 BY THE JURORS: Morning.

15 VOIR DIRE EXAMINATION BY MR. LUMUMBA:

16 Good to see you fresh. You have got one big loud
17 Good Morning today. I am Chokwe Lumumba. My name is like
18 some of yours. People mispronounce it all the time; right?
19 So say that with me. Chokwe.

20 BY THE JURORS: Chokwe.

21 BY MR. LUMUMBA: Lumumba.

22 BY THE JURORS: Lumumba.

23 BY MR. LUMUMBA:

24 Okay. But anyway, I appreciate it. What we are
25 going to do now is ask you some questions that we think we
26 would like to ask. Everyone understands this is a very
27 serious trial; is that correct?

28 So we would like to ask some questions because
29 these questions are not meant to intrude, to embarrass you in

1 any way, and if any question by the way that you want to
2 answer and you prefer to answer it at the bench rather than
3 in the audience, feel free. You know, just let me know, and
4 if you have any questions for the Judge, I am sure that he
5 will entertain it as long as we do it in that manner.

6 So I'm going to ask you questions, and one of the
7 questions I wanted to ask; it came to my attention that juror
8 number 11, Mr. Winston Warden, someone said that you are not
9 feeling good? You have the flu?

10 A. (BY JUROR 11, MR. WINSTON O. WARDEN) Yeah. I
11 think so.

12 BY MR. LUMUMBA: Okay. Can we approach the
13 bench on that?

14 BY THE COURT: Sure.

15 BY MR. LUMUMBA: Okay, can you move?

16 BY THE COURT: He has already talked to me.
17 I know what he is going to say.

18 BY MR. LUMUMBA: Oh, I'm sorry. I'm sorry.
19 Oh, I'm sorry. No, I don't need to approach. I
20 thought you didn't know.

21 BY THE COURT: No, he has talked to me.

22 BY MR. LUMUMBA: Okay, I'm sorry. All right.

23 BY MR. LUMUMBA:

24 Now Mr. Warden, as long as I have asked that
25 question, you are feeling quite badly? Is that--

26 A. (BY JUROR 11, MR. WARDEN) Oh, yeah. Knocks the
27 hell out of me.

28 Q. Okay, you feel that you need some relief; is that
29 correct?

1 A. True.

2 Q. Okay, would that--

3 A. I believe I can get somebody to shoot me.

4 (Laughter.)

5 BY UNIDENTIFIED JUROR IN THE BACK: Wrong
6 answer.

7 (Laughter.)

8 BY MR. LUMUMBA:

9 Q. We can't do that, but in any event, if you are
10 feeling the way you are feeling now, it would be difficult
11 for you to concentrate on the case and things of that nature.
12 Is that true?

13 A. (BY JUROR 11, MR. WARDEN) Yes.

14 Q. Okay. I am sure the Judge will get back to that.
15 Okay, now let me say something to all of you. Okay, first of
16 all, this is, because of the nature of this case, does
17 everybody understand that all you have heard about here is
18 today the Judge-- and the Judge did what I thought was very
19 good indicating to you that what this is, this comes up in an
20 indictment. And that is all that is, is a charge. Do you
21 understand what I'm saying? And sometimes people are
22 charged with things that they did not do. Does everybody
23 agree with that? Anybody that does not agree with that, give
24 me a hand raise. (No response.)

25 And Mr. Flowers here has pled not guilty. No, no,
26 no is our position; right. He has pled not guilty saying
27 that what is charged as to him now is not true. Does
28 everyone understand that? And this is a case where because
29 of the burden of proof, these folks sitting at this table,

1 they bring the charge here. And this is kind of like, the
2 law is kind of like the State of Missouri, show me, all
3 right. So if you bring it, then you have got to prove it.
4 You know, that's what it is; right? And if it is not proven,
5 then the proper verdict would be what?

6 BY JURORS: Not guilty.

7 BY MR. LUMUMBA: Not guilty, okay. So we
8 submit that that will be the case here. And the only reason
9 I raise that at this time is because see, this is a difficult
10 thing we have here in our society and in any society where it
11 comes up. We have got to talk about this thing they call the
12 death penalty; right? We talk about it because in a capital
13 case if there is a conviction, all right, that is a
14 possibility. Does everyone understand that; right?

15 But the one thing that I try to let people know
16 because sometimes we lose focus, right. We are thinking oh,
17 the death penalty; should I give him the death penalty?
18 Should I give him life, you know? You know, as far as we are
19 concerned, you ain't going to have the choice because see,
20 the situation is that if the jury looks at the evidence and
21 says not guilty, you understand that the sentencing phase
22 will never occur. Does everyone understand that?

23 BY SOME OF THE JURORS: Yes.

24 BY MR. LUMUMBA: Okay. So that is an
25 important thing, and can everyone promise me that during the
26 course of the trial if they are selected as a juror is that
27 will be their focus as to whether or not this evidence or
28 lack of evidence proves guilt in any way. Does everyone
29 agree to that?

1 BY JURORS: Yes.

2 BY MR. LUMUMBA: Okay, now let me say this
3 here. Trials are not like on TV. Everybody seen Matlock?
4 (Laughter.) Everybody seen Matlock? I do. My wife is
5 always on me to turn that stuff off, but I have been watching
6 Matlock. I don't know why I watch Matlock. Seems like I
7 would get enough of this; right? So I watch Matlock, you
8 know. But see, this is not Matlock. Everybody understand
9 that? So see, in these trials-- and everybody remember Perry
10 Mason?

11 BY SOME JURORS: Yes.

12 BY MR. LUMUMBA: If you remember Perry Mason,
13 raise your hand. (Many hands go up.) Oh, you are telling on
14 yourself, age. Okay, you know, but Perry Mason, I used to
15 love Perry Mason too, but see this is not TV.

16 So two things to remember between Matlock and Perry
17 Mason and here in court. First of all, the Court says that
18 the burden of truth is on the prosecution. I think you will
19 hear evidence and you will hear evidence that, you know from,
20 you will hear evidence that will suggest and we will get this
21 evidence or we will have many witnesses, but you will hear
22 evidence that raises questions as to whether Mr. Curtis
23 Flowers was anywhere around at the time that this incident
24 occurred. Do you understand what I'm saying?

25 And so the law does not require him to prove what
26 happened at the scene of where the crime is charged. The law
27 is wise. They say if you bring the charge, you prove it. Do
28 you understand what I'm saying? So unlike Matlock, we don't
29 have to prove who committed it; right? You know, if we

1 weren't there, we don't know who committed it. Do you
2 understand what I'm saying? And so he doesn't have the
3 police force and the Sheriff's Department and a whole lot of
4 people to go out and do a lot of investigating. Do everyone
5 understand?

6 And so what we do here is the Judge says the burden
7 of proof is on the prosecution to prove their case. We don't
8 have a case to prove, and if you watch Matlock, you need to
9 understand that; right? Because Matlock is always proving
10 everything; right? (Laughter.) Okay, but you understand
11 that we have no burden to prove a case. Does everyone
12 understand? If you disagree with that, please raise your
13 hand. (No response).

14 Now for instance, juror in seat number 3, Mr.
15 Moleta?

16 A. (BY JUROR 3, MR. JOSEPH MOLETA) Yes, sir.

17 Q. Is that your name? You know, we have these
18 questionnaires and we read the questionnaires. And if I'm
19 not mistaken, I think that you were born in England; is that
20 correct?

21 A. Middle Sex.

22 Q. Middle Sex. Is that in the British Empire?

23 A. My dad was in the Air Force.

24 Q. In the Air Force. Oh, okay. You were just over
25 there?

26 A. I was just over there.

27 Q. Okay. (Laughter.) I just thought I would ask you
28 that, make a point here. But in any event, like some
29 countries, they may do it the other way.

1 A. Right.

2 Q. They may say that you are presumed guilty, and then
3 you have to prove you're innocent; right? But in this
4 country you are presumed innocent, and then there has to be
5 proof of guilt. And I don't want to repeat that again, but
6 everybody, because I think it is so important, if you
7 understand that, please raise your right hand.

8 (Jurors' hands go up.)

9 Thank you very much. Okay, now and the other thing
10 is that in a trial there is real witnesses, and in a trial
11 you have to judge the credibility of witnesses. You have to
12 see whether what they say is consistent with what they said
13 yesterday - do you understand? - or the day before or the
14 year before or whatever. You have to see if what they say is
15 consistent with the physical evidence; right? You have to
16 see if the evidence actually proves. You look at the
17 physical evidence and see if it actually proves it. That's
18 what you do in a trial.

19 Now in Perry Mason you really, the jury really
20 didn't have to do a whole lot of work in Perry Mason; right?
21 Because in Perry Mason somebody would always jump up in the
22 back of the courtroom and say, "He didn't do it. I did it."
23 Right? So we don't expect anybody, it's not TV, and we don't
24 expect anybody to jump up in the back of the room. But that
25 is the way that real trials work is based upon the
26 consideration of evidence. Is everybody with me on that?

27 Now look at the person next to you, right and
28 left. Look at the person next to you. All right. A
29 beautiful person there, but in any event, if I was to tell

1 you -- I mean the person next to you looks like a pretty nice
2 person; right?

3 (Inaudible response by a juror.)

4 BY MR. LUMUMBA: Okay. Go ahead. Take a look
5 for me. (Laughter.) But if I was to tell you that that
6 person next to you yesterday hit me over my head, shot at me
7 and stole my wallet, would that change your opinion of that
8 person next to you? Everybody who would have a changed
9 opinion raise your hand. (No response.)

10 Y'all all know about presumption of innocence;
11 right? You were trying to raise your hand, weren't you?
12 Uh-huh, okay. Okay, it's a natural human reaction. If I
13 come up to you and tell you that stuff, unless I am a little
14 shaky myself; do you see what I'm saying? It's a natural
15 human reaction to say that person is being charged with a
16 serious thing, and that occupies your mind, and it begins to
17 color your vision of that person.

18 That is why the law has this powerful thing called
19 presumption of innocence. Does everybody see what I'm
20 saying? It's fighting against that human tendency to believe
21 it's true just because they say it. Do you understand what
22 I'm saying? So what the law says is that you not only have
23 to say it, you have to prove it, and you have to prove it
24 with evidence which convinces the jury beyond a reasonable
25 doubt. Does everyone agree to that?

26 And so I think the Court will invite you to
27 consider the evidence. You will have an opportunity to
28 consider the physical evidence. Are there things at the
29 scene which point to Curtis Flowers? Are there fingerprints

1 that he was at the scene? Are there no fingerprints? Are
2 there any evidence that suggests that he ever at any point in
3 time shot a gun? Is there any evidence to suggest that he
4 shot a gun at that scene? That he shot the gun-- is there
5 evidence beyond a reasonable doubt to prove that he shot the
6 gun that day at that scene or that he was even there at that
7 scene? Is there anything that puts his foot there, his foot,
8 not just anybody's foot? Not just one of two hundred
9 thousand people, but his foot there. Does everybody
10 understand what I'm saying?

11 So all these things will be things that you will be
12 allowed to deal with. Did anybody say that they saw him
13 shoot anybody? All these will be things that you will have
14 a chance to evaluate. So, and we are all up to that; right?
15 We are ready, okay.

16 Now I have got to ask you a few questions. Now
17 before we asked people about publicity, okay. And only a
18 couple of people indicated that they had any possible notion
19 of what this was, had heard anything prior to this. Now let
20 me just say this to you.

21 First of all, there is nothing wrong with you
22 having heard about the case. I mean that is not against the
23 law. Everybody understand that; right? I mean if you heard
24 about it, and I am just saying this as a preliminary; if you
25 heard about it, you didn't know you were going to be a juror
26 at the time you heard about it; right? So it would have been
27 perfectly okay. But the question is I ask you to examine
28 your minds because we need to know if anybody has any
29 misapprehensions of what they are.

1 But, okay, now there is one thing that the District
2 Attorney said in his questions to you yesterday which, you
3 know, which I want to repeat to see if this jogs anybody's
4 memory. Now this is a case where the District Attorney is
5 charging that someone went into a place and killed four
6 different people in a place called Tardy Furniture Store.
7 This is what the charges are. And this Tardy Furniture Store
8 is in a little town called Winona; right, that this occurred
9 and that it was four deaths that occurred and that one of
10 these deaths was a gentleman by the name of Mr. Stewart.
11 Does everyone hear what I just said?

12 Now having said that, and this was supposed to have
13 occurred back in July of 1996. That is all the evidence that
14 you are going to hear, and I think you will find out that we
15 are not disputing any of that, that some people were killed
16 that was at Tardy's, and it happened in July of 1996. I
17 think that is what you will hear from the defense is that we
18 don't know who did it, and we will get to that in the
19 evidence.

20 But what I would like to ask you, now having said
21 that, has anybody read or heard about it or know anything
22 about this case? Okay. Good. (Jurors number 73 and 44
23 raise their hands.) All right, and like I said, you know,
24 you can be candid. It's not a problem. Number 73 and-- I'm
25 going to get your names eventually. I might have to say the
26 numbers to start off with.

27 Number 73 is Ms. Beeson, and I think number 44
28 raised his hand, and that is Mr. Cooper. And number 64, and
29 that is Ms. Melvin.

1 **BY THE COURT:** Mr. Lumumba.

2 BY MR. LUMUMBA: Yes.

3 **BY THE COURT:** Can I see you just a second,
4 both of y'all just a second?

5 BY MR. LUMUMBA: Okay, sure.

6 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
7 THE JURY AS FOLLOWS:)

8 **BY THE COURT:** If you would just get their
9 names, and then we will do individual on them.

10 BY MR. LUMUMBA: Okay.

11 END BENCH CONFERENCE

12 BY MR. LUMUMBA: All we are taking right now
13 is just the names. So I'm just asking the question. I saw
14 the sign go up. I don't know--

15 BY UNIDENTIFIED JUROR: --No.

16 BY MR. LUMUMBA: Okay.

17 **BY THE COURT:** How about number 60?

18 BY MR. LUMUMBA: Yeah, number 60. Were you
19 raising your sign or just loosening up?

20 BY JUROR 60, MR. DONALD G. SEYMOUR: Yes.

21 BY MR. LUMUMBA: You were raising your sign?
22 Okay. Number 60 is Mr. Seymour, okay. And I just want to
23 repeat: Ms. Beeson, Mr. Cooper, Mr. Melvin, and Mr.
24 Seymour. Was there anybody else? Okay, all right.

25 Now we went through an analysis of-- I want to ask
26 people something about crimes generally if I may. But let me
27 just say one other thing, you know, about credibility of
28 witnesses. I think that credibility of witnesses also have
29 to be judged when it comes to a question of eye witness

1 identification or the individuals that make eye witness
2 identification. And the Judge will probably charge you with
3 respect to that. Now everyone feel they can follow the law
4 or whatever the law is on those charges? Right. And the
5 law always allows you to make the decision. The law is just
6 a guide to, you know, things that sometimes that must be
7 considered. Sometimes it should be considered; right?

8 Let me say this, is that have all of you been in a
9 situation - and if you have, you know, show me a nod of your
10 head - where sometimes you see people that you thought were
11 somebody, and then later on it turns out were somebody else?
12 (Several hands go up.) You have had that experience?
13 Okay. And if you haven't had that experience, you have heard
14 of people that had experience; right?

15 And you note that sometimes what it is, the longer
16 you have to see a person then the more certain you can be of
17 who it is; right? But if you see a person a short period of
18 time, very short, you know, then it is more difficult
19 sometimes to be accurate. Would you generally agree with
20 that? Well, that may be a consideration in the case, and you
21 may want to consider that. But you can wait until, you know,
22 the proof comes up and until the Judge gives you the
23 instructions.

24 Now there was quite a few people, if I could
25 recall, who indicated that they were actually victims of
26 crime. A little later on I'm going to have to ask some of
27 you very specific questions on this. But to start off with,
28 I think we would all agree is that we don't like crimes. Is
29 there anybody here that likes crime? Raise your hand. I

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 promise you won't be arrested, okay. (Laughter.) But
2 anybody want to raise their hand? (No response.) So it is
3 something that people have a problem with.

4 What we ask is if any of that, and sometimes it is
5 stronger with people who have personally been affected,
6 right, than it is with people who have not been affected.
7 Sometimes people just philosophically have a problem, but do
8 you understand that this is not the place to air one's
9 philosophical views? Everyone understand because it is also
10 an-- and I don't know if you call it a crime, but it
11 certainly is also tragic, the deaths of people. Four people
12 certainly is tragic; we would agree. But it is also tragic
13 to convict someone of a crime who is not responsible for that
14 crime. Would we agree to that?

15 So what we want to do is to not put the burden of
16 what is happening in society on any one individual. Okay,
17 people at this table, you don't think they are responsible
18 for the crime, do you? People at this table, you don't
19 think are responsible for the crime, okay. So what it is is
20 that we don't have to put that burden on any particular
21 person.

22 Now I'm going to ask a few questions to
23 individuals, and then we are going to move on. My first
24 question was to Mr. Moleta?

25 A. (BY JUROR 3, MR. JOSEPH MOLETA) Moleta.

26 Q. Actually Mr. Moleta, you already indicated that you
27 weren't born, you were just born over there?

28 A. I was born there.

29 Q. You really are from here; is that correct?

1 A. I am from here.

2 Q. Okay, are you from Mississippi?

3 A. Yes, sir.

4 Q. Okay, and were your parents essentially from
5 Mississippi?

6 A. Keesler.

7 Q. Keesler. Okay.

8 And then we have Ms. Turner?

9 A. (BY JUROR 8, MS. PATRICIA A. TURNER) Yes.

10 Q. Okay, Ms. Turner. I think you are juror number 8?

11 A. Uh-hum.

12 Q. I was just looking at your form, and you indicated
13 that you-- and I'm going to ask you a few questions because I
14 have to too, you know, about the death penalty. And the way
15 I ask the questions is for any case; right, because our
16 position is you will never get to it here. Did you put down
17 that you strongly support the death penalty; is that correct?

18 A. Yes.

19 Q. Now you didn't fill out the section of why you feel
20 that way.

21 A. Uh-hum.

22 Q. And it may very well be that that was missing from
23 your form because the last part of your form also had the
24 signature on it, and you didn't sign it; right?

25 A. Oh.

26 Q. You just kind of left it off, but do you have a
27 position? I don't want to ask you what it is, but do you
28 have a position or do you have a reason why you feel that
29 way?

1 A. Yeah.

2 Q. Okay. We will get back to that.

3 A. Okay.

4 Q. That is Ms. Turner.

5 And then we will go to Ms. Cook. Ms. Cook, you are
6 number 10; right?

7 A. (BY JUROR 10, MS. KAREN J. COOK) Right.

8 Q. How are you doing?

9 A. Okay. How about yourself?

10 Q. I am doing good. And Ms. Cook, I think that you
11 have indicated that you had strong death penalty views; is
12 that correct?

13 A. No, I really believe in whatever the crime is,
14 punishment should suit the crime.

15 Q. Okay.

16 A. That's the way I feel. I don't, I'm not strong on
17 death or strong for it, but I'm not.

18 Q. Okay, but several people put on their form like an
19 eye for an eye; a tooth for a tooth. People that believe
20 that, please raise your hand. An eye for an eye; tooth for a
21 tooth?

22 A. (BY JUROR MS. COOK) In some cases, yes.

23 Q. Okay, I mean and this is, like remember, there is
24 no wrong answers. But if you believe that, raise your hand
25 for a moment because there are some questions I want to ask
26 you. Eye for an eye; tooth for a tooth. Okay. (Several
27 hands go up.)

28 And I think that juror in seat number 44 - who I
29 promised I would remember his name, and I am still looking

1 for it - is Mr. Cooper. Okay, Mr. Cooper. And you believe
2 that and, of course, that is a belief you formed, and a lot
3 of people form; is that correct?

4 A. (BY JUROR 44, MR. DAVID COOPER) Yes.

5 Q. Okay, in fact, I think there is some place in the
6 Old Testament that is where that is quoted from. Is that
7 correct?

8 A. Yes.

9 Q. Okay, but in any event, what my question is to you,
10 do you believe that if a person is convicted of killing a
11 person, you know, in any way where the evidence is; if a
12 person is convicted of killing another individual, that that
13 person should get the death penalty?

14 A. I think if it is premeditated, yes.

15 Q. Okay, say a person meant to, intended to kill
16 somebody. They should get the death penalty?

17 A. Right.

18 Q. Okay, now let me ask you this question. Do you
19 feel that if you were ever in a position where you were in a
20 trial where somebody was actually was convicted, do you feel
21 that then in order for that person who was convicted of
22 premeditated killing or killing intentionally not to get the
23 death penalty, they would have to prove to you some reason
24 why they shouldn't get it?

25 A. Yes. I think they (inaudible).

26 BY THE COURT REPORTER: I can't hear him.

27 BY THE COURT: You need to speak up, Mr.
28 Cooper, so she can hear you.

29 A. (BY JUROR 44, MR. COOPER) Yes. I think if they

1 are convicted of intentionally killing somebody, then they
2 should get the death penalty.

3 **BY THE COURT:** Mr. Lumumba, you need to put
4 that in the context of Witherspoon or reverse
5 Witherspoon.

6 **BY MR. LUMUMBA:** Yeah. Do you want me to do
7 it now or do you want to do that--

8 **BY THE COURT:** Well, I think if you don't do
9 it now, you are liable to mislead them some.

10 **BY MR. LUMUMBA:** Okay, let me do that, okay.

11 **BY MR. LUMUMBA:**

12 And just, I'm going to put it in the context of
13 you, but I want to see if that is something that-- there is
14 another juror that raised your hand. What is your number?
15 I'm sorry.

16 A. (BY JUROR 48, MS. CONNIE L. LADNER) Mine? 48.

17 Q. Number 48. Do you also, is that basically how you
18 also feel?

19 A. If guilt was proven beyond a shadow of a doubt, no
20 room for doubt whatsoever and that was premeditated, then
21 yes, I agree with the death penalty.

22 Q. Okay, now when you use the term "shadow of a
23 doubt," are you using that in the same way that you would use
24 "reasonable doubt"? Is that just another word for
25 reasonable doubt as you are concerned?

26 A. Guilt has to be proven with no doubt. No doubt
27 whatsoever on guilt.

28 Q. Okay, and juror number 48, your name is?

29 A. My name is Connie Ladner.

1 Q. Okay, Ms. Ladner. Thank you.

2 Also, I think some other folks raised their hands;
3 is that correct? That is juror number 60. And juror number
4 60 is Mr. Seymour. Mr. Seymour, do you basically have the
5 same position that Mr. Cooper had?

6 A. (BY JUROR 60, MR. DONALD G. SEYMOUR) It's a little
7 on the vague side but (inaudible).

8 BY THE COURT REPORTER: --I can't hear him.

9 BY THE COURT: You have to stand up, please.

10 BY MR. LUMUMBA:

11 Q. Could you stand up, please. I'm sorry.

12 A. It seems like the question is a little bit vague as
13 far as an eye for an eye and a tooth for a tooth, but yes, I
14 believe--

15 Q. --Okay, and I'm going to fill it in a little
16 better.

17 BY MR. EVANS: Your Honor, I object also
18 because this is misleading. I think he has got to
19 ask the jury if they will follow the Court's
20 instructions, and he is not covering that part of
21 it because the question is will they listen to the
22 evidence--

23 BY MR. LUMUMBA: --Excuse me, Judge--

24 BY MR. EVANS: --and follow the Court's-- I am
25 doing an objection right now.

26 BY MR. LUMUMBA: Excuse me. Can we approach
27 the bench?

28 BY MR. EVANS: The question is--

29 BY THE COURT: --Why don't y'all approach the

1 bench.

2 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
3 THE JURY AS FOLLOWS:)

4 BY MR. EVANS: Your Honor, he is purposely not
5 asking the correct form of the question which is
6 the law in an attempt to mislead the jury, and I
7 would ask-- I don't care what he asks, but I would
8 ask that either the Court or him one ask the proper
9 questions so that the jury knows what is going on.

10 BY THE COURT: The test is Witherspoon and
11 reverse Witherspoon, and all the other is--

12 BY MR. LUMUMBA: I'm going to ask that
13 question. I am just trying to identify the jurors
14 that needed to be asked so I can ask them all at
15 once rather than going through all of them and
16 saying the same thing over and over again. Now if
17 you want me to do it that way--

18 BY THE COURT: --No, I'm going to give you
19 some latitude on it.

20 BY MR. LUMUMBA: Okay.

21 BY THE COURT: But then I want you to, as soon
22 as you get them identified, let's go back and put
23 it to them the way the reverse is; okay?

24 BY MR. LUMUMBA: No problem. I have no
25 problem.

26 END BENCH CONFERENCE

27 CONTINUED VOIR DIRE BY MR. LUMUMBA:

28 Is there anybody else - and I do have some other
29 questions to put to you folks on that - but I wanted to see

1 first of all, is there anyone else that has that view, an eye
2 for an eye and a tooth for a tooth. And that is juror number
3 73, and the name there is?

4 A. (BY JUROR 73, MS. MARCIA W. BEESON) Beeson.

5 Q. Beeson, Ms. Beeson. Anybody else?

6 Okay, now let me just ask you this. First of all,
7 as I begin to ask you these questions, all I would like to do
8 is know how you feel, okay. And some of you may be just
9 discovering how you feel, okay. You may not actually know
10 because you may not have ever actually been in this situation
11 before. But I just want to know the truth. So don't let me
12 tell you how to answer the question, right, and don't let
13 anybody tell you how to answer the question. There is no
14 special way to answer the question other than what you feel
15 is true.

16 Now the question is-- now the other question was
17 put to you is that if you feel an eye for an eye and a tooth
18 for a tooth, that would suggest, like Mr. Cooper said at
19 first, is that your at least initial feeling is that if a
20 person killed somebody, they should get the death penalty; is
21 that correct?

22 A. (By unidentified juror) Yes.

23 Q. But now if you got charged by the Judge, he is
24 going to tell you that in a trial there is another-- you
25 know, there is a stage out there; right? Okay, there is a
26 stage where you have what you call the sentencing phase. Do
27 you understand what I'm saying? And in the sentencing phase
28 they are supposed to prove aggravating circumstances. Do you
29 see what I'm saying? And even if it is a so-called

1 premeditated murder, intentional murder, what the law says is
2 that there is a chance to prove that the prosecution, before
3 you can even consider that - Do you understand what I'm
4 saying? - before you can even consider that, the prosecution
5 has to prove that there are some reasons for death beyond the
6 fact that it was an intentional or premeditated killing.
7 Does everyone understand?

8 So my question to you now, Mr. Cooper, Ms. Ladner,
9 Ms. Beeson, and Mr. Seymour, is that - and I will ask Mr.
10 Cooper first, and then I will go to the other folks - that
11 given that, given your feelings on it as far as an eye for an
12 eye and a tooth for a tooth and about premeditated killing
13 should be punished with death, that is not what the law
14 says. So the question is if the Judge tells you that there
15 has to be proof of an aggravating circumstances, something
16 beyond the fact that you think it's intentional and it has to
17 be proved beyond a reasonable doubt, right, in the sentencing
18 phase -- regardless of what they have done in the trial, they
19 have got to prove it in the sentencing phase; right? If he
20 tells you that, the question I ask you, is that something
21 that you can easily follow, or is that something that runs
22 against the grain to the point that you have a problem with
23 it?

24 A. (BY JUROR 44, MR. DAVID COOPER) I have difficulty
25 in understanding that. You know, if they are proven beyond a
26 reasonable doubt of intentionally killing somebody, what else
27 could be offered that would mitigate?

28 Q. Well, let me just give you an example. Somebody
29 might try, they might have to try to prove that there was a

1 robbery, okay, because it may very well be that the law
2 says - and I don't want to speak for the law, but the Judge
3 will. It may very well be that the law says that you can't,
4 in a capital murder case you can't impose the death penalty
5 unless there is a plus like a robbery. Do you see what I'm
6 saying? It has to be a robbery. In other words, intention
7 is not enough. You know what I'm saying? There has to be a
8 robbery.

9 So if the Judge said that, that there had to be
10 something proved beyond a reasonable doubt, a robbery or
11 maybe some other aggravating circumstances, could you follow
12 that law, or would you have a problem with it?

13 A. I could follow the law.

14 Q. Okay. And that answers one of my questions, that
15 you would follow the law. The other question is would you
16 have a problem with it?

17 A. I wouldn't necessarily agree with the law. I mean
18 it may bother me, but I would follow the Judge's
19 instructions.

20 Q. Okay, would you, and this is, like I said, this is
21 just to get an honest answer. Would you kind of be leaning
22 in a direction of giving the death penalty anyway, and so it
23 would kind of have to be that the defense would have to prove
24 to you it shouldn't be given and that would you be leaning
25 toward finding the robbery just because you felt that there
26 should be an execution?

27 A. Well, I would say if they were found guilty, I
28 would be leaning towards the death penalty. This is just my
29 personal thinking.

1 Q. Okay. But you understand that what I think the law
2 is asking you to do is to come into the sentencing phase with
3 an open mind and not lean in any direction. Would that be
4 difficult for you to do that?

5 A. I think it would be difficult, but I think--

6 Q. --You would try to do it?

7 A. Right.

8 Q. Couldn't tell us for certain?

9 A. Right. I haven't been there, so I don't know.

10 Q. And the same question to you, Ms. Ladner. Did you
11 understand what I was saying?

12 A. (BY JUROR 48, MS. CONNIE L. LADNER) Yes, sir. My
13 opinions are my own opinions, and I don't like somebody
14 trying to impose their opinions on me. As far as the laws go
15 and the structure of the system, yes, I could follow that
16 structure.

17 Q. Okay, would you, and you would be able to like if
18 the Judge told you something in the sentencing phase, the
19 Judge said look, you know, that is not enough. You know, if
20 somebody in any case that you happened to be at, and you guys
21 might not even be in that case together; right. Okay, but in
22 any case that you were asked if somebody was proven guilty of
23 killing someone intentionally or premeditated or whatever,
24 would you be a person who would--

25 A. --Could I set aside my opinions and look at it all
26 objectively?

27 Q. Yeah, without anybody, without leaning one way?

28 A. Yes.

29 Q. Okay.

1 And that is the same question to you, Ms. Beeson.

2 A. (BY JUROR 73, MS. MARCIA W. BEESON) I would not
3 have a problem--

4 **BY THE COURT:** --Ms. Beeson, could you stand
5 up, please, ma'am. Thank you.

6 BY JUROR MS. BEESON:

7 A. I would not have a problem following the Judge's
8 instructions, and I could put aside what I feel personally
9 after listening to the evidence.

10 Q. You wouldn't tend to lean one way or the other?

11 A. I wouldn't; no.

12 Q. How about you, Mr. Seymour?

13 A. (BY JUROR 60, MR. DONALD G. SEYMOUR) I have
14 problems with several things involved in the judicial
15 system. I could do my best to follow exactly what I am asked
16 to do. I believe I could, but until I am put in that
17 position I can't tell you for certain that I can. But I feel
18 like I could be, lean towards what I am told to do as far as
19 the judicial system says.

20 **BY THE COURT:** Mr. Seymour, I apologize. I
21 couldn't hear you. Did you-- the question, the end
22 result of the question was would you follow my
23 instructions on the law in this case?

24 A. (BY JUROR MR. SEYMOUR) I would like to believe
25 that I would, yes.

26 **BY THE COURT:** Okay, I have got to know.

27 A. Like you stated a minute ago, until you are put in
28 that position, you really don't know. But as far
29 as I feel, yes, sir; I can.

1 **BY THE COURT:** Well, of course, what I am
2 telling you is and then what I have said earlier in
3 this case is that you have taken an oath as jurors,
4 and a part of that oath is that you will follow my
5 instructions on the law whether you think that is
6 the law, whether you believe it ought to be the law
7 or anything else. You are required by your oath as
8 jurors to follow that instruction on the law. My
9 question to you is will you do that?

10 A. And my answer was yes, sir; I believe I can.

11 **BY THE COURT:** Thank you, sir.

12 BY MR. LUMUMBA:

13 Q. And I'm not trying to belabor it, but you believe
14 you can, but I think like you told me before, you really
15 won't know until you are in a situation. Is that your
16 answer?

17 A. (By Mr. Seymour) I feel like I could be as straight
18 and honest as I could. If you want an answer other than what
19 I gave you--

20 **BY THE COURT:** Well--

21 BY MR. LUMUMBA:

22 Q. No, I don't want an answer other than what you
23 gave. Let me tell--

24 A. --What I was getting at is the answer would be if
25 you are not satisfied with what I just gave as an honest
26 answer, then I will have to protect myself and yourself by
27 saying no.

28 Q. No what?

29 A. That I can't follow it. Because I have given you

1 as straight an answer as I possibly could.

2 Q. Mr. Seymour, I understand that, but let me see if I
3 can just put it into focus. I think that we all have a
4 responsibility up here. You see, I know we ask questions
5 which are tough to answer, okay, and we ask questions of
6 people who may have never considered these questions. You
7 understand what I'm saying? But see, put yourself a little
8 bit up here too. I am up here and I am representing this
9 gentleman, Mr. Flowers, who I believe, okay. And we have a
10 position, and if you had someone up here in the same
11 position, you would want the attorney to ask those questions,
12 wouldn't you?

13 A. Yes, sir.

14 Q. Would you not?

15 A. Yes.

16 Q. So we would want to know as certain as we could,
17 even if a person couldn't be certain, we would just want the
18 person to say clearly, no, I can't be certain. When the
19 Judge asked you, I have got to have an answer, he is not
20 telling you, you have got to say, I am certain. He is just
21 telling you he has got to have an answer. If you can't give
22 him one, you tell him that, and then we will just move from
23 there. He has to make up his mind from there. Do you
24 understand what I'm saying?

25 A. I stated in my heart I believe that I could follow
26 the direction of the law.

27 Q. Okay. And are you certain of it?

28 (Laughter.)

29 A. Are you really looking for an answer there?

1 BY MR. EVANS: Your Honor, I object. There is
2 no sense in him just keeping on harassing this
3 witness-- this juror out here and--

4 BY THE COURT: --Well, nobody is trying to
5 harass anybody. Mr. Seymour, I hope you understand
6 that. It's just as I said at the first of this
7 voir dire, there are absolutely no wrong answers
8 here. There are none unless you just hold back
9 information that I need to know, and I don't think
10 any of y'all have done that. And so, you know, it
11 doesn't make any difference to me which way you
12 fall on this thing. I just need to know which way
13 you are going to fall. That is the whole purpose
14 of it, and I promise you nobody is trying to harass
15 you at all.

16 A. (By Mr. Seymour) Is my answer satisfactory?

17 BY THE COURT: Yes, sir. It is complete.

18 A. Thank you.

19 BY MR. LUMUMBA:

20 Q. Okay. Ms. Cook. I already talked to you, didn't
21 I?

22 A. (BY JUROR 10, MS. KAREN J. COOK) Yeah.

23 Q. Right, okay.

24 And Mr. Warden, I know you're kind of suffering
25 right there, but you also indicated that you had a real
26 strong opinion on the death penalty. Is that correct?

27 A. (BY JUROR 11, MR. WINSTON O. WARDEN) Yes.

28 Q. Would you basically take that attitude of an eye
29 for an eye, tooth for a tooth position?

1 A. No. It depends upon the circumstances.

2 Q. Okay, thank you very much.

3 Now Mr. Overstreet, I think that you served on a
4 jury once; is that correct?

5 A. (BY JUROR 15, MR. JAMES M. OVERSTREET) Yes, sir.

6 Q. Okay, and if I understand correctly, what kind of
7 trial was that?

8 A. Well, the last one, it was a drug case.

9 Q. Okay, the first one, sir, what was that?

10 A. It was some kind of an altercation they had at a
11 restaurant or something.

12 Q. Was it criminal or civil?

13 A. It was criminal. But it wasn't real serious, I
14 don't think. The guy told him not to come back and he came
15 back, had more trouble. His ex-wife worked there and stuff
16 like that.

17 Q. Okay.

18 A. He was found guilty too.

19 Q. Okay, did you sit on both those juries?

20 A. Yes, sir.

21 Q. Okay, those things-- I notice also that in some of
22 the questions and I'm going to ask questions about victims of
23 crime. You responded that actually you were-- was it you
24 that said that you were held at gunpoint?

25 A. That's right.

26 Q. Okay, and I imagine that was a traumatic
27 experience?

28 A. Well, I didn't get scared until it was all over
29 with. (Laughter.) It was at night and the guys got away,

1 and it was two of them, and they never were caught.

2 Q. Okay, did you or-- oh, they never were caught.
3 Were you able to give any kind of description to the police?

4 A. Some.

5 Q. Okay. And what was that description as you
6 recall?

7 A. Well, it was two males and they were black. I'm
8 not trying to be racial or anything.

9 Q. Okay, and where did this occur?

10 A. New Orleans.

11 Q. New Orleans. Was it during Mardi Gras?

12 A. No, I was over there on the produce market. I had
13 a load of watermelons down there.

14 Q. Okay. And this happened quite a while ago?

15 A. Oh, yeah, probably 30 years, a long time.

16 Q. A long time, but this question I am putting to Mr.
17 Overstreet, I really want all of you to think about it, okay,
18 because I know that there has been other folks in here that
19 have had problems with criminal activity. Mr. Overstreet,
20 and like you said, I mean nobody, you know, you didn't ask
21 anybody to point a gun at you; right?

22 A. No.

23 Q. Okay, I am sure you didn't, and it's bad when
24 somebody does that. But it's an experience which you have in
25 your history at this time; is that correct? I mean something
26 that has happened to you?

27 A. Uh-hum.

28 Q. So what I want you to do is just to let me know is
29 there anything about that experience that, you know, here

1 sitting in judgment of another person who may be charged with
2 something that, rightfully or wrongfully may be charged with
3 something that involves a gun being pointed at and shot at
4 other people, is there anything about your experience which
5 would make you in any bit the slightest lean toward the
6 prosecution's case to accept the testimony that--

7 A. --No.

8 Q. Okay, and I appreciate that. Okay. And it's not
9 racial; right?

10 A. Oh, no.

11 Q. Okay, and it's not racial at all but sometimes
12 those--

13 A. --You asked me the description and that--

14 Q. --and that is why I asked it. I will be honest
15 with you, but I just wanted, does anybody have any problems
16 with that? Regardless of what your history is, that this
17 case is a case where everybody is the same? Does anybody
18 have a problem with that? If you agree with that, please put
19 your hands up. Okay, thank you.

20 Mr. Dobson, I think it is?

21 A. (BY JUROR 16, MR. DAVID JOEL DOBSON) Yes, sir.

22 Q. Okay, I think you said you had a cousin that was
23 charged with murder?

24 A. Yes, sir.

25 Q. Okay, and what happened with that case?

26 A. I think he was sentenced to life.

27 Q. Okay. And was that somebody close to you?

28 A. Uh, not really.

29 Q. And my question to you is there anything about that

1 experience-- did you have enough knowledge of the case to
2 know whether that was good or bad in terms of the kind of
3 verdict?

4 A. Well, when it happened, I was young. I was in the
5 Marine Corps.

6 Q. Young. Okay, anything about that experience going
7 to at all affect you in terms of your jury service?

8 A. No, sir.

9 Q. Now Ms. Finch, juror number 17, Ms. Finch?

10 A. (JUROR 17, MS. TERESA M. FINCH, raised her hand.)

11 Q. Okay, right there. We had, I think you indicated
12 before that you had heard something about the case. Is that
13 correct?

14 A. Yes.

15 Q. Okay, and I don't want to ask you what you heard or
16 anything. But has anything been said to you in questioning
17 by either one of us now which has made you remember any more
18 than you remembered the last time you talked to us?

19 A. No, sir, actually less. From what you said, it's
20 not even remotely the same as what I had heard which I
21 indicated yesterday.

22 Q. Okay, all right. So you wouldn't have any problem
23 being fair and impartial?

24 A. Absolutely not.

25 Q. You were also a victim of an assault. Somebody
26 stole your purse?

27 A. Yes.

28 Q. Okay, and is that somebody which you think would
29 affect you at all?

1 A. Absolutely not.

2 BY THE COURT: Mr. Lumumba, could you talk up
3 a little bit? She has trouble hearing you.

4 BY MR. LUMUMBA: Oh, I'm sorry. I'm sorry.

5 Q. That is something that you don't think would
6 interfere with you at all?

7 A. No, sir.

8 Q. Did that occur here in this area?

9 A. No, sir. It did not.

10 Q. Where did that occur?

11 A. In South Carolina.

12 Q. Ms. Weiss, I noticed that your cousin, something
13 about your cousin being sentenced. Is that--

14 A. (BY JUROR 18, MS. RAYANNE M. WEISS) Right. He was
15 drunk and he was-- it was manslaughter I think is what it
16 was. I'm not real sure because it was distant. He did serve
17 his sentence.

18 Q. I'm sorry?

19 A. He was convicted and he served his sentence--

20 Q. --Okay, is that--

21 A. --house arrest.

22 Q. Was that a cousin you were close to?

23 A. No. I just see him on family occasions, you know.

24 Q. Oh, okay. Now you also were a person who responded
25 the other day about having heard perhaps about--

26 A. Right.

27 Q. Is there anything that we have said at this point--

28 A. --No, sir.

29 Q. In any way jogged?

1 A. No, sir.

2 Q. Okay. Now Mr.-- or Ms. Ballman. Ms. Ballman, I
3 think, is juror number 20. Okay, your form doesn't have
4 answers to certain questions, and I would just like to ask
5 you these questions to make sure. Have you at any point in
6 time-- actually, I can see probably why it didn't reflect
7 that. They gave you a form that was out of order. One page
8 was--

9 A. (BY SEVERAL UNIDENTIFIED JURORS) Everybody's was
10 like that.

11 Q. Every form? That is no excuse then. (Laughter.)
12 But anyway then, everybody's form was out of order. All
13 right. I think they may have gave you two of the same
14 pages. Okay. Have you ever appeared as a witness before the
15 grand jury?

16 A. (BY JUROR 20, MS. CINDY S. BALLMAN) No, sir.

17 Q. Have you ever appeared as a witness in a criminal
18 prosecution?

19 A. No, sir.

20 Q. In a civil case, have you ever appeared as a
21 witness?

22 A. No, sir.

23 Q. Have you ever served on a jury before?

24 A. Yes, I have.

25 Q. And what kind of case?

26 A. It was a rape case.

27 Q. That was a criminal matter. And did you serve to
28 the end?

29 A. Yes, sir.

1 Q. Okay, was there a verdict?

2 A. Yes, there was.

3 Q. What was it?

4 A. Not guilty.

5 Q. Was that here or somewhere else?

6 A. It was in Stone County.

7 Q. Stone County. Stone County, Mississippi?

8 A. Mississippi.

9 Q. Okay. Have you ever been a party personally to any
10 legal action where you have been sued or somebody sued you?

11 A. No, sir.

12 Q. Okay, and you never been involved personally with
13 any kind of criminal charges?

14 A. No, sir.

15 Q. Thank you very much.

16 And Ms. Partridge, I understand you are a legal
17 assistant? That is juror number 21?

18 A. (BY JUROR 21, MS. SUSAN C. PATRIDGE) Yes, sir.

19 Q. Okay. And what kind of law-- do you work for a law
20 firm?

21 A. Yes.

22 Q. What kind of law firm do you work for?

23 A. Plaintiff's.

24 Q. Plaintiff's lawyers. They sue people; right?

25 A. Uh-hum.

26 Q. Okay, all right. Good. But no, but now what I
27 would like to know is how long have you worked there?

28 A. About two years.

29 Q. Two years. Do you do any, do they do any criminal

1 work?

2 A. No.

3 Q. Okay, in your job do you come into contact with
4 criminal law where it might affect you in terms of any bias
5 one way or another?

6 A. No, sir.

7 Q. Okay. And you work for lawyers?

8 A. (Juror Ms. Patridge nods her head.)

9 Q. Your bosses are not going to try to tell you how to
10 decide the case?

11 A. No, sir.

12 Q. You wouldn't let them do that anyway?

13 A. No, sir.

14 Q. Okay. And it is nothing about that going to
15 interfere with you?

16 A. No.

17 Q. Okay.

18 I think that we have a number of people whose
19 relatives served in law enforcement. I know one juror
20 number, was it Ms. Pell?

21 A. (BY JUROR 25, MS. EMMA J. PELL) Pell.

22 Q. Right here, okay. Ms. Pell, your father was in law
23 enforcement in Long Beach?

24 A. Uh-hum.

25 Q. What does he do?

26 A. He is retired now. He was Chief of Police.

27 Q. Okay, he was Chief of Police for a number of years?

28 A. My whole life.

29 Q. Your whole life. Did he come home sometimes and

1 talk to you about different cases he was involved in?

2 A. Not really.

3 Q. You pick up on conversations between him and your
4 mother and stuff like that?

5 A. Just, I mean no more than any other child would.

6 Q. Okay, but was anything ever said that you think
7 that would influence you in any way as far as the case is
8 concerned?

9 A. Not, not really. I mean no. Probably no.

10 Q. Okay, you said not really and you said no. Nobody
11 knows--

12 A. --Well, I mean I was brought up with a father that
13 was a police officer. So I mean I am sure I am biased to the
14 way they think.

15 Q. Okay. Well, let me just ask you this because
16 really what we are interested in is how you feel. And of
17 course, it is good that your father was a police officer.

18 A. Right.

19 Q. It's good that we have got some, okay, but what we
20 need to do is just ask you these questions. Now there is
21 nothing from what you have told me, there is nothing that
22 actually happened with him in any case that would make you
23 feel you would lean one way or another in this particular
24 case; is that correct?

25 A. Not that I can recall.

26 Q. Okay. As it relates to police officers generally,
27 see, this is a trial where different people testify. Some
28 may be police officers; some may not be police officers. And
29 if-- so one of the questions that I have to ask and will ask

1 is do you tend to favor police officers because of your
2 experience in such a way is that you would think a police
3 officer's word would be better than somebody else's word just
4 because they are police officers?

5 A. Not just because they are a police officer, but I
6 probably would tend to listen more to what they say.

7 Q. And--

8 A. I have been around them my whole life, I guess.

9 Q. Okay, you would tend to listen more to police
10 officers than to non-police officers?

11 A. Right.

12 Q. If you had a fellow who was a total stranger who
13 got up and testified who was not a police officer.

14 A. I would listen, but I mean, you know, it's just --
15 I am sure I would favor more to a police officer.

16 Q. Okay, and that is just because?

17 A. That is just because the way I was raised.

18 **BY THE COURT:** What is your number, ma'am?
19 I'm sorry.

20 **BY JUROR MS. PELL:** 25.

21 **BY THE COURT:** Thank you.

22 **BY MR. LUMUMBA:** Pardon? May we approach for
23 a minute?

24 **BY THE COURT:** Uh-hum.

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
26 THE JURY AS FOLLOWS:)

27 **BY MR. LUMUMBA:** I think that needs to be
28 pursued a little more, but I don't know if you want
29 us to pursue her here or individually. I don't

1 have any problem with it either way.

2 **BY THE COURT:** I don't think, I think there
3 will be individual responses in relation to folks,
4 and I don't think it'll taint the rest of the
5 panel.

6 **BY MR. LUMUMBA:** Okay.

7 **END BENCH CONFERENCE.**

8 (The Bailiff approached the Court.)

9 **BY MR. LUMUMBA:**

10 Q. Ms. Pell.

11 A. (BY JUROR 25, MS. EMMA J. PELL) Uh-huh.

12 Q. Okay, and your number is 25.

13 A. Yes.

14 **BY THE COURT:** Wait just a minute, Mr.
15 Lumumba. Who was that?

16 **BY THE BAILIFF:** It was a female. I don't
17 know. She was on this side.

18 **BY MR. LUMUMBA:** Oh, somebody left?

19 **BY THE COURT:** Yeah. Let's wait until they
20 get back. If y'all need a break, y'all raise your
21 hand and I will let you go, but I have got to know
22 when anybody is gone because everybody has got to
23 be here for all the questions because I never know
24 when it is going to apply to you. So don't just
25 walk out.

26 (Pause while waiting for a juror to return who
27 went to the bathroom.)

28 **BY THE COURT:** All right. Mr. Lumumba, you
29 may proceed.

1 BY MR. LUMUMBA: All right. Thank you.

2 BY MR. LUMUMBA:

3 Q. Okay, Ms. Pell, just to follow up a little bit. So
4 if you were in a situation where say one witness was not a
5 police officer and got up there and said well, this happened,
6 and then the police officer got up there and said well, that
7 is not the way this happened; right? There is a conflict,
8 and if I understand you, and you correct me where I am wrong,
9 you would tend to more favor the police officer's testimony
10 than the other person's testimony?

11 A. (BY JUROR 25, MS. PELL) That is probably true.

12 Q. Now if the Judge gave you an instruction even
13 though, and remember about these instructions. Instructions,
14 what we are asking you if you feel you could follow the
15 instructions; right? We are not telling you that the law
16 says that you have to say you can follow the instructions.
17 That is why we are asking the questions. If you don't think
18 you can follow the question, it might be another case that
19 would be better for you. Do you understand what I'm saying?
20 That doesn't have anything to do with you as a person.

21 A. Right.

22 Q. And the question that I would have is that do you
23 feel that even if the Judge tells you that everybody's
24 testimony has to be evaluated the same--

25 BY MR. EVANS: --Your Honor, I object. That
26 is not the law. The jurors are entitled to listen
27 to the testimony of all the witnesses, and then the
28 jurors decide what weight and credibility to give
29 each witness. That is the correct law.

1 BY MR. LUMUMBA:

2 Q. And they cannot tell. I agree with that except
3 they cannot use because a person is a police officer, I'm
4 going to believe them; right. I think the Judge will tell
5 you that. If he told you that, could you follow that
6 instruction?

7 A. I could follow that instruction.

8 Q. Okay, even though your natural tendency would not
9 be to--

10 A. --that I would be biased, yes. Natural tendency
11 would be the other way. I would probably have a conflict
12 with it.

13 Q. Would it be a conflict that would cause enough
14 problems that would make you wonder whether you could
15 actually follow the instructions?

16 A. I would follow the instructions that I was told to
17 follow.

18 Q. I'm a little bit confused.

19 A. Okay, I would follow the instructions if I was told
20 to follow the instructions.

21 Q. And you are telling me you could do that?

22 A. Sure. Yes.

23 Q. Thank you very much, Ms. Pell. I appreciate it.
24 Is Ms. Lee?

25 A. (BY JUROR 26, MS. STEPHANIE B. LEE) Yes.

26 Q. Okay, Ms. Lee, I think that you said that you
27 worked as a-- you work in court personnel. Where do you
28 work? For the Circuit Court?

29 A. Circuit Clerk's office. I do voter registration

1 and marriage licenses.

2 Q. Are there people-- do you know the Clerk and
3 various different court personnel that work--

4 A. --I know Gayle Parker and Connie Ladner and yes, I
5 know them.

6 Q. Connie, okay. And do you know other-- Connie, I
7 think, was or she was a prospective juror?

8 A. No. That is a different Connie Ladner. The one
9 that was sitting up there earlier.

10 Q. Oh, okay. I'm sorry.

11 A. Shirley Valdez was a prospective juror.

12 Q. Okay. Anything about those relationships that make
13 you feel uncomfortable about serving?

14 A. No, sir.

15 Q. You also had a family member that was a victim of a
16 crime. I think you said burglary; is that correct?

17 A. Well, our cars. My car and my husband's car were
18 burglarized.

19 Q. Any other member of your family been a victim of a
20 crime?

21 A. No.

22 Q. Your uncle had someone or you had a problem because
23 your uncle had hired someone to kill--

24 A. Yes, sir.

25 Q. --his wife. Okay, was he convicted of that?

26 A. He was convicted. He served his time. He is out
27 now. In fact, he speaks to his ex-wife. They have a good
28 relationship.

29 (Laughter.)

1 BY MR. LUMUMBA:

2 Q. Is there anything about that that would--

3 (Inaudible because of more laughter.)

4 A. Some people are more forgiving than others, I guess
5 you can say.

6 Q. Well, certainly, it wouldn't affect you in any way
7 and make you biased in any way?

8 A. No.

9 Q. And you don't think because your uncle may have
10 been guilty in that case that anybody is guilty here?

11 A. Correct.

12 Q. Okay, we have Mr. Davis, juror number 32. Mr.
13 Davis, you said your [REDACTED] was a victim of some kind of crime?

14 A. (BY JUROR 32, MR. CURTIS H. DAVIS) [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q. Okay, was it a crime you can tell us about?

18 A. I would rather not.

19 Q. Okay, all right. Can you approach the bench,
20 please.

21 (CONFERENCE AT THE BENCH WITH JUROR NUMBER 32,
22 MR. CURTIS DAVIS, PRESENT BUT OUT OF THE HEARING OF
23 THE REST OF THE JURY PANEL:)

24 BY THE COURT: What's your number, sir?

25 BY JUROR MR. DAVIS: 32.

26 BY THE COURT: Okay. Mr. Davis.

27 BY JUROR MR. DAVIS: I simply don't want to
28 say it because it's [REDACTED] personal life. It was a
29 rape, and it has nothing to do with my--

1 BY MR. LUMUMBA: --It wouldn't affect you?

2 BY JUROR MR. DAVIS: Not at all.

3 BY THE COURT: Would it affect you at all in
4 this case?

5 BY JUROR MR. DAVIS: No, because I have no
6 personal feelings because it happened before [REDACTED]
7 [REDACTED] and I don't know the guy. I didn't
8 know anything. I just don't like saying it for
9 her, for her personal--

10 BY THE COURT: I understand.

11 BY MR. LUMUMBA: I understand. Thank you very
12 much.

13 BY THE COURT: Thank you.

14 END BENCH CONFERENCE

15 BY MR. LUMUMBA:

16 Q. You watch TV and you watch "The Cops" and
17 "Practice"?

18 A. (BY JUROR 32, MR. DAVIS) Yes, sir.

19 Q. All right. Now "Cops," what is that about?

20 A. It's a show where they show the cops arresting,
21 going in and doing all that stuff.

22 Q. And then the other show "The Practice," that's one
23 where they have the guys that run a law firm?

24 A. Yes.

25 Q. Okay, and they go in and they represent people in
26 different kinds of cases?

27 A. Right.

28 Q. Anything about those experiences because I
29 imagine-- I don't really watch "Cops" so I don't know what it

1 deals with, but anything about any of those experiences that
2 would prejudice you?

3 A. No. We enjoy law shows and medical shows.

4 Q. Stop watching "Cops." But no, I am just kidding.
5 Okay, now Mr. Davis, I think that you indicated on your form
6 that you kind of generally favored the death penalty?

7 A. If the circumstances warrant it.

8 Q. Okay, so you are not, you wouldn't say like eye for
9 an eye and tooth for a tooth; right?

10 A. No.

11 Q. Okay. So what you are saying is that you could
12 follow the instructions as it relates to, first of all,
13 putting it out of your mind until you get to the point of
14 seeing if it's, if there is any proof here, okay, of
15 sufficient for a verdict? Do you see what I'm saying?

16 A. Yeah.

17 Q. And then if it got beyond that point in anything,
18 then what would happen is you would follow the Judge's
19 instructions related to what you had to prove?

20 A. Yes.

21 Q. Okay, understanding that there are several hurdles
22 that has to be jumped before you can even consider that, you
23 could do that; right?

24 A. Exactly.

25 Q. And you know that in no situation does anybody ever
26 tell you that you have got to give somebody the death
27 penalty; you understand that; right?

28 A. (Juror 32 nods his head.)

29 Q. And there is no situation where the law tells you

1 you have got to give somebody the death penalty. Do you
2 understand what I'm saying?

3 A. Yes.

4 Q. So even when you jump the hurdles, after that point
5 then it is up to you to decide with your individual jurors
6 what the decision should be. Do you understand?

7 A. I do.

8 Q. Could you follow that?

9 A. I can.

10 Q. Okay, and at no point can even the individual
11 jurors tell you what you have got to decide. Your vote is
12 your vote.

13 A. Exactly.

14 Q. Okay, and I am really talking to everybody. I am
15 using you as the person I am asking the questions. But does
16 everybody understand?

17 A. (BY MANY JURORS) Yes.

18 Q. Now I am having a little problem with this name.
19 This may be the one-- (Laughter.) Number 35.

20 A. (BY JUROR 35, MR. ANDRES ECHAVARRIA) Echavarria.

21 Q. Me and you got these names, you know, okay. Say
22 your name.

23 A. Echavarria.

24 Q. Echavarria, right. Did I do it right?

25 A. Without the Spanish accent but-- (Laughter.)

26 Q. Well, excuse me.

27 (Laughter.)

28 Q. We all come from different places. But in any
29 event, Mr. Echavarria -- I had that problem in Germany too.

1 But in any event, on the question that you raised, you had a
2 pretty strong position on this death penalty. Do you
3 remember?

4 A. Uh-hum.

5 Q. Okay, and you indicated that-- well, you indicated
6 a number of things. But it would be safe to say that you,
7 your opinion even had to do with the use of tax dollars and
8 things of that nature. Is that correct?

9 A. Uh-hum.

10 Q. And you pretty much feel because of that why you
11 are strongly in support of the death penalty. Is that
12 correct?

13 A. Well, just because someone is being charged with a
14 crime and it is a serious offense, I'm not going to say give
15 them the death penalty.

16 Q. Right.

17 A. I am more towards people who are repeated
18 offenders, who have been convicted repeatedly of a serious
19 crime.

20 Q. Okay, I understand that.

21 A. But as far as I am concerned, you know, this
22 gentleman from what I understand is being charged for the
23 first time, and I have no biases just to impose the death
24 penalty on him.

25 Q. Well, do you have any biases to try to find him
26 guilty just because he is charged with something that carries
27 the death penalty?

28 A. No, sir.

29 Q. Okay, so you can be totally open minded about it?

1 A. Yes, sir.

2 Q. And I see here that you are very, seem to be very
3 clear on what you think, and I appreciate that. Are you a
4 student or been a student?

5 A. I have been a student.

6 Q. Okay, and what kind of degree do you have?

7 A. Psychology.

8 Q. Oh, psychologist. And what is that, a bachelor's?

9 A. Associates.

10 Q. Associates, okay. And are you intending on
11 continuing school?

12 A. Yes, sir.

13 Q. Okay, thank you. How long have you lived here in
14 this area?

15 A. I have been in Mississippi for about eight years.

16 Q. And if I understand correctly, you came from New
17 York City; is that correct?

18 A. That's right.

19 Q. And you have never served on a jury before?

20 A. No, sir.

21 Q. Okay.

22 Mr. Lackey.

23 A. (JUROR 36, MR. JOHNNY F. LACKEY, II, stands up.)

24 Q. Okay, good morning?

25 A. Morning.

26 Q. And you also indicated on your form a strong
27 support for the death penalty; is that correct?

28 A. Yes, sir. I did.

29 Q. Okay, and you probably have heard the discussion

1 that we have had to this point. Is that correct?

2 A. Yes, sir.

3 Q. And I guess the critical issue is, you know,
4 feeling that way personally and deep down in your own
5 consciousness, do you feel that in any case where there might
6 be a question that you can be totally open minded and say
7 well, I will listen to everything? Or do you think that you
8 would be leaning right from the beginning, if it ever came to
9 that, toward giving somebody the death penalty?

10 A. No. First I would have to hear all the facts that
11 are involved in the case.

12 Q. Okay, and you can--

13 A. --If it is warranted, then I would say yes, give
14 the death penalty.

15 Q. Okay, if it's warranted.

16 A. If that is what is warranted. I even believe they
17 ought to bring back public executions, hang them out here in
18 front of the courthouse for everybody to see. That way you
19 would have a very good deterrent. But nowadays it is just
20 slap your hands and let you go.

21 Q. Okay, you think that they should do that?

22 A. Yeah. Sure. It would bring down the crime rate, I
23 believe.

24 Q. Okay, thank you, Mr. Lackey. Mr. Lackey, and I
25 take it you have never served on a jury before?

26 A. Yes, sir. I have served on a jury before.

27 Q. Okay, and what kind of case was that, civil or
28 criminal?

29 A. It was a civil, insurance fraud, attempted arson.

1 Q. Okay. And you found for the plaintiff; is that
2 correct?

3 A. That's correct.

4 Q. Well, what I would like to ask you, and this really
5 goes to everybody who may have served on a civil jury
6 before. You understand in a civil case, Mr. Lackey, the
7 burden of proof is different than a criminal case. Do you
8 understand that?

9 A. Sure.

10 Q. Okay, in a civil case they tell you something about
11 like preponderance of evidence which means one side has to
12 just make you feel that it is a little more likely that their
13 position is correct. In other words, the plaintiff has to
14 prove that it is a little more likely that he is right than
15 it is that the defendant is right. Do you understand what
16 I'm saying?

17 A. Sure, whichever side, you know, has got more what I
18 would call truthful, whatever each side is representing.

19 Q. Okay, but now you understand in a criminal case
20 that that is not what it is like?

21 A. Right.

22 Q. First of all, we don't have to prove anything. Do
23 you understand that?

24 A. Right.

25 Q. Can you follow that instruction?

26 A. I can.

27 Q. And then secondly, the prosecution has to prove not
28 just a little more proof, but it has to go beyond a
29 reasonable doubt. Do you understand?

1 A. Right.

2 Q. So in a criminal case there is only one side that
3 has to prove anything. Do you understand that?

4 A. Right.

5 Q. Can you, having been through a civil jury
6 experience - and I'm not suggesting you can't; I'm just
7 asking you - can you follow that instruction?

8 A. I can follow it.

9 Q. And is there anything about your strong belief,
10 your whole public execution and all that--

11 A. --No. Like I said, I would have to hear all the
12 facts to the case, whether it deserves it or not.

13 Q. Okay. And please don't take this personally
14 because, you know, you are kind of strong. I mean obviously,
15 I would like to inquire. But, you know, sometimes you have a
16 favorite. Do you understand what I'm saying?

17 A. Oh, yeah.

18 Q. Like for instance, even if a basketball game is
19 being played; right? You look at the game and you may have a
20 favorite, and you are kind of hoping that that team comes out
21 on top. Do you understand what I'm saying?

22 A. Correct.

23 Q. Now this is a trial; right?

24 A. Oh, yeah.

25 Q. And you are not supposed to have any favorites;
26 right?

27 A. Right.

28 Q. Okay, so what I'm trying to ask you and I would
29 like a sincere answer to it. Because of your strong view and

1 because it is a case in which somebody is charged with a
2 terrible crime, one which you believe a public execution
3 should occur in if that person is guilty of it and all that
4 kind of stuff, if the criteria is there, would you kind of
5 like have a favorite from the beginning and be rooting for
6 the prosecution?

7 A. No, sir.

8 Q. Would you root for us?

9 A. No, sir. I wouldn't root for you either. I would
10 have to hear all the facts. That is what I already stated.

11 Q. I appreciate that. Thank you very much.

12 Does everybody understand what I am trying to say?
13 Now people talk about harassing jurors and stuff like that.
14 But you understand that we don't have any personal animosity
15 towards anybody. Do you understand that? And that what we
16 do, we do if you were sitting up here. Understand what I'm
17 saying? And we do it because it ought to be done because the
18 law says based on its wisdom that there is a presumption of
19 innocence, and if there are people for whatever reason can't
20 walk with us, then this may not be the trial for them. Does
21 everyone understand what I'm saying? Okay.

22 And I know that you are ready for me to sit down.
23 Okay. And you are ready to go on and do something else, but
24 bear with me for a moment because you would appreciate, would
25 you not, that this is a very serious case. And we need to be
26 very serious about it; right? And I think that you will.

27 Now juror number 37, and that is Ms. Hall. Ms.
28 Hall, you have indicated that your [REDACTED] was a victim of a
29 very tragic situation; is that correct?

1 A. (BY JUROR 37, MS. GWYNNE F. HALL) Yes, sir.

2 Q. And is that something recent or a while ago?

3 A. About nine years ago, eight or nine years ago.

4 Q. How old is your [REDACTED] now?

5 A. [REDACTED]

6 Q. [REDACTED] okay. Was there any resolution to that? Was
7 anybody arrested because of the crime?

8 A. No, sir.

9 Q. Okay. Was it a stranger or somebody else?

10 A. We know the person.

11 Q. Somebody in the family?

12 A. No, sir.

13 Q. Okay. Is that situation and there is even a
14 certain amount of tension as I ask you the question, and I
15 can appreciate that. It would be for me too. We are here in
16 a very delicate kind of situation with a very serious charge;
17 right?

18 A. Yes, sir.

19 Q. And that is a serious situation; right?

20 A. Yes, sir.

21 Q. Is there anything about that in terms of being the
22 person that has been the victim of that kind of situation in
23 your family, right, that would make you feel a little bit
24 like you should lean in one direction here?

25 A. No, sir.

26 Q. Okay, you could be totally objective and up front
27 with the evidence?

28 A. Yes, sir.

29 Q. And you would do that?

1 A. Yes, sir.

2 Q. Okay, I appreciate it. Thank you very much.

3 Mr. Thurston, you are juror number 38. Okay, right
4 next to her, okay. I noticed that on your form you indicated
5 that you really didn't have an opinion on the death penalty;
6 is that correct?

7 A. (BY JUROR 38, MR. DANIEL D. THURSTON) No, I don't.

8 Q. Okay, that is still basically how you feel?

9 A. That's how I feel.

10 Q. So obviously, there is nothing that would affect or
11 make you lean one way or another?

12 A. No.

13 Q. Okay, you are going to be totally-- you would
14 answer affirmatively to all the questions that we asked about
15 the burden of proof and presumption of innocence; is that
16 right?

17 A. Right. That's correct.

18 Q. Thank you very much.

19 This is Mr. Franklin, juror number 39. You were
20 found not guilty in a situation, a case that was--

21 A. That's correct.

22 Q. Okay, and that was quite a while ago; is that
23 correct?

24 A. Eleven years.

25 Q. Eleven years. Okay, now is there anything about
26 that experience that would have you lean one way or the
27 other?

28 A. It would have me leaning, no. It just makes me
29 believe in the system.

1 Q. Okay, okay. I appreciate that, and you would
2 appreciate what the jurors put into your trial?

3 A. Absolutely.

4 Q. And you would be willing to put that in the trial
5 of anybody else?

6 A. I definitely would.

7 Q. And one final question. I want to ask you what the
8 charge was, but if you don't want to say, you can come up
9 here and we will--

10 A. The charge was theft.

11 Q. Huh?

12 A. Theft.

13 Q. Okay. But that happened about 11 years ago; is
14 that correct?

15 A. Correct.

16 Q. Okay, we appreciate that. Thank you very much.

17 Ms. Kreeger. I understand that your nephew was
18 convicted of manslaughter?

19 A. (BY JUROR 41, MS. CHARLENE S. KREEGER) Yes, sir.

20 Q. Okay. Anything about that experience that
21 disturbs you to the point where you have a bias one way or
22 the other?

23 A. No. He has served his time. He is out. He grew
24 up over there.

25 Q. He grew up, okay. And you also have the situation
26 here where I think you served on a jury before?

27 A. I have. I was an alternate on a criminal case, and
28 then I have served on a civil jury in federal court, but it
29 settled before it went to the jury.

1 Q. Okay, so in the criminal case you really never sat
2 on the real jury?

3 A. They dismissed me when the jury went back for
4 deliberations.

5 Q. And they only dismissed you, of course, because you
6 were an alternate?

7 A. Right.

8 Q. Okay. And you also had a situation with-- did I,
9 oh, okay. You have a pretty strong feeling on the death
10 penalty too. Is that true?

11 A. Yes. I am very strongly in favor of the death
12 penalty. I agree with what you said and that they have to
13 prove it, and it goes through the appeal process and
14 everything like that.

15 Q. And in any case because as I have indicated to you,
16 our position is it will never get there here; correct? But
17 in any case where you get to the point where the Judge gives
18 you an instruction which lets you know it's appropriate to
19 consider the whole question of death, could you give honest
20 consideration to both options, life and death, or would you
21 basically because of your--

22 A. --No, I would give it honest consideration if the
23 facts warranted it.

24 Q. Okay, appreciate it.

25 Now we also have Ms. Denise Shilstone?

26 A. (BY JUROR 42, MS. DENISE SHILSTONE) Shilstone.

27 Q. Shilstone. Ms. Shilstone, you have this very nice
28 typed out, which I appreciate. You also served on a jury
29 before?

1 A. Yes, sir. I have.

2 Q. And one or two?

3 A. Four.

4 Q. Oh, that's right. You are the veteran?

5 A. Yeah, I am the veteran.

6 Q. Okay. And one of them was a death penalty case?

7 A. Yes, it was.

8 Q. And did you serve on a jury in any other criminal
9 cases? Were all four criminal cases?

10 A. No. Two were criminal, and two were civil.

11 Q. Okay. Now given the kind of death situation that
12 you were in, you were serving on a jury, and so you really,
13 all this-- you know more about this than other folks who have
14 never been in this situation; correct?

15 A. (Juror Ms. Shilstone nods her head.)

16 Q. This is my question. Do you think that that
17 experience in any way would make you lean one way or the
18 other because, you know, you have been through it? At
19 certain points in the trial it's not academic any more; is
20 that right? In other words, there is different influences
21 working on your mind; right?

22 A. Absolutely.

23 Q. And even if you try to put things out of your mind,
24 they keep trying to creep back in; right?

25 A. Yes, but your judge's instructions help
26 tremendously at the end. If you are going to vacillate any
27 way, one way or the other, you get the instructions, and it
28 keeps you right on the right track.

29 Q. Okay, and you can be kept on the right track?

1 A. Absolutely.

2 Q. Okay, but there is and the reason he gives those
3 instructions is because people tend to wander?

4 A. Uh-hum.

5 Q. Is that correct? So is there anything about that
6 experience that would in any way affect you in this trial?

7 A. No, sir.

8 Q. Okay. Now Mr. Cooper. I think that you were the
9 victim of a car burglary?

10 A. (BY JUROR 44, MR. DAVID COOPER) Correct.

11 Q. And certainly that is not involved here?

12 A. No.

13 Q. And you don't think anybody here is responsible?

14 A. No. That was in '85.

15 Q. Huh?

16 A. That was a long time.

17 Q. '85. You don't think the prosecution did it?

18 A. No.

19 Q. And you don't think we did it?

20 A. No.

21 Q. And so that is not going to be a problem. Also,
22 your brother's car was stolen, and that is not going to be a
23 problem?

24 A. No.

25 Q. Okay. And the other thing is you also had a very
26 strong opinion as it related to the death penalty. Is that
27 correct?

28 A. That's correct.

29 Q. Okay, and I characterize it that way, but is it

1 strong? I don't know. Is it a strong view? I don't want to
2 put words in your mouth.

3 A. Well, like I said before, if it's a premeditated or
4 willful murder--

5 Q. --Okay, I'm sorry. You already responded. I'm
6 sorry. You refreshed my memory. Okay, now, thank you.
7 Thank you.

8 And Ms. Anderson is juror number 45. Ms. Anderson,
9 I think that you, and I'm not quite sure, but was there a
10 death in the family?

11 A. (BY JUROR 45, MS. PHYLLIS D. ANDERSON) Yes, sir.

12 Q. Okay, that was as a result of something. What was
13 that?

14 A. Drunk driving.

15 Q. What driving?

16 A. Drunk.

17 Q. Drunk driving, okay. And I think I recall now you
18 were saying that if this was that kind of case, you might
19 have a problem?

20 A. Definitely, if it was.

21 Q. Okay, and I can appreciate that, and I can
22 appreciate that distinction. In all cases, regardless of
23 what kind of cases they are, at some point we have to make
24 very delicate decisions. Do you understand what I'm saying?
25 Do you think that anything about that experience would
26 disturb you or help you, tilt you in the least way or the
27 other in this trial because of that?

28 A. Not at all.

29 Q. Thank you very much.

1 Ms. Ladner, Connie Ladner. You just have the same
2 name as somebody else?

3 A. (JUROR NUMBER 48, MS. CONNIE L. LADNER nods her
4 head.)

5 Q. All right, I think we have got you on the death
6 penalty question, and you said you were a victim of a
7 domestic violence situation; right?

8 A. Right. Yes.

9 Q. And you also indicated that someone in your family
10 was convicted as it related to your [REDACTED] is that right?

11 A. Yes.

12 Q. Okay. How long ago did that happen?

13 A. That has been about 14 years ago.

14 Q. And it had to be a difficult experience?

15 A. Yes. It certainly was.

16 Q. Okay, do you think there is any, you know,
17 psychological leftovers from that that would affect you here
18 at all?

19 A. No, sir.

20 Q. Okay, how about the robbery situation? Were you a
21 victim of a robbery?

22 A. Yes.

23 Q. And how did that-- I mean I don't want you to give
24 me the whole description of it, but somebody robbed you, put
25 a gun at you or what?

26 A. No, they had a crowbar. I was working in a small
27 convenience store just off a highway, and they just, it was
28 just drive by robbers more or less. It was just a small
29 incident.

1 Q. How long ago was that?

2 A. 1987.

3 Q. Was that person ever arrested as far as you know?

4 A. Not that I know of.

5 Q. Okay, so even though that happened, they never
6 really found that person?

7 A. As far as I know, they didn't.

8 Q. That was not someone you knew?

9 A. No, sir.

10 Q. And that is not a case that would affect you in any
11 way. Say the prosecution-- by the way, in all cases whatever
12 the prosecution charges they have to prove; you understand,
13 right? So it is really not correct to say at this point that
14 any, that in this case this is a case where a robbery will be
15 proven; right? We don't know what is going to be proven at
16 this point, and we really don't know because we weren't
17 there. Mr. Flowers, our position is going to be, wasn't
18 there, so he doesn't know either. But what I'm saying is you
19 understand that is something that they would have to prove.
20 You understand? And they would have to prove with good
21 evidence from people who either were there or people who
22 know. You understand?

23 But what I would like to ask you about is the
24 robbery situation. If this is a case where someone is trying
25 to prove robbery, would you be more likely to find robbery
26 just because of your experience?

27 A. No, sir.

28 Q. Okay, I think Ms. Young. Ms. Young?

29 A. (BY JUROR 50, MS. ANITA YOUNG) Yes.

1 Q. How are you doing? Okay, I think your uncle was
2 killed; is that correct?

3 A. Right.

4 Q. Is he someone that was here, or was it somewhere
5 else?

6 A. He was in Waynesboro where I lived at the time.

7 Q. Okay, were you-- was this recently or a while ago?

8 A. A while ago in the 70's.

9 Q. In the 70's?

10 A. Uh-hum.

11 Q. Okay, now is that something that you have any
12 psychological, what they call it, they call it baggage now.
13 Is there anything that you have remaining that might affect
14 you in any kind of way?

15 A. No.

16 Q. Okay, well, let me ask you this here. I notice
17 very clearly you had indicated that if it was, if it were a
18 case where there was-- the allegation is that somebody killed
19 Mr. Stewart, who was a male. Do you see what I'm saying?
20 Okay, at the same time I think that you will hear evidence
21 that suggests that some other people were killed on the same
22 day. Do you understand what I'm saying? A couple of those
23 folks were females. Is that going to make you biased in this
24 case understanding that our position is that we voted not
25 guilty-- we entered a not guilty plea, and that's where we
26 are at. Is that going to make you biased toward Mr.
27 Flowers?

28 A. I don't know.

29 Q. Okay. I would like to pursue that a little bit.

1 BY THE COURT: Ms. Young, if you would stand
2 up. My Court Reporter can't hear your answer.

3 BY MR. LUMUMBA:

4 Q. Okay, you said, I asked you if that was going to
5 make you biased toward Mr. Flowers; is that correct?

6 A. (BY JUROR 50, MS. YOUNG) Right.

7 Q. And you said, "I don't know."

8 | A. Right.

9 Q. And I said that I would like to pursue that later.
10 Okay, that's what I said.

11 BY THE COURT: Yeah, that is fine.

12 BY MR. LUMUMBA: Okay.

13 BY THE COURT: Oh, you didn't want to pursue
14 it then?

15 BY MR. LUMUMBA: Well, can we approach for a
16 minute?

17 BY THE COURT: Sure.

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
19 THE JURY AS FOLLOWS:)

20 BY MR. LUMUMBA: I would like, she expressed a
21 real strong view. I would like-- I'm going to make
22 a motion to pursue that in individual voir dire.

23 BY THE COURT: Okay. I don't have any problem
24 with that.

25 | END BENCH CONFERENCE

26 CONTINUED VOIR DIRE BY MR. LUMUMBA:

27 Q. Okay, we have here Ms. Neil, Shelly Neil?

28 A. (BY JUROR 52, MS. SHELLY R. NEIL) That would be
29 me.

1 Q. Good, Ms. Neal. That's the way to spark out. We
2 are getting a little tired. Okay, thank you very much.
3 Okay, Ms. Neal, what I had here is a little star near your
4 job, and you work-- is that a bank?

5 A. Yes, that's correct.

6 Q. You were describing what you do. What is it that
7 you do; I'm sorry?

8 A. I am a local area network specialist. I work for a
9 technical services department at the bank.

10 Q. Okay, thank you very much. And you have never been
11 a victim of any kind of crime at that bank?

12 A. I am not in an area where that-- I'm not located in
13 a branch. I am in the main building. I would never even be
14 around that actually.

15 Q. Okay, thank you very much.

16 And Ms. Smith, juror number 53?

17 A. (BY JUROR 53, MS. DONNA M. SMITH) Yes.

18 Q. I think that your forms may be one of the ones that
19 we just recently acquired. What is your occupation? I'm
20 sorry.

21 A. I'm a supervisor at a grocery store.

22 Q. Okay. And have you ever been the victim of any
23 kind of crime or anything like that?

24 A. No.

25 Q. Oh, okay. On number 39 you said that, they were
26 asking if you have any religious or personal biases against
27 anything, and you indicated you had biases against folks who
28 worship-- oh, I'm sorry. You said folks that worship the
29 devil; right?

1 A. Yeah, things like that.

2 Q. Or trying to manipulate people; is that right?

3 A. (Juror Ms. Donna Smith nods her head.)

4 Q. Okay, I didn't get the devil part in the first time
5 I read it.

6 A. Okay.

7 Q. Okay, that is the only kind of bias?

8 A. They were mixed up.

9 Q. Okay, and it certainly wouldn't affect you?

10 A. No.

11 Q. Thank you.

12 Juror number 55, I did just receive your form, and
13 that is Mr. Sallis. Is that correct?

14 A. (BY JUROR 55, MR. OTHA BELL SALLIS) That is me.

15 Q. Okay, how are you doing?

16 A. Fine. How about you?

17 Q. Okay, good. You did know somebody here. That was
18 Mr.?

19 A. Mr. Taylor.

20 Q. Okay, and I think that is why I marked you. Is
21 that going to influence you in any way?

22 A. No, it wouldn't.

23 Q. And I want to ask this question to everybody. Is
24 there anybody here who-- I mean this situation is where
25 actually somebody is related to each other as far as a
26 stepfather and stepson. No, no, no. Father-in-law.

27 A. (By Mr. Sallis) Right.

28 Q. Father-in-law and son-in-law. But as to the rest
29 of you, is there any jurors here that knows someone else that

1 is on the jury panel, even though you may not be related to
2 them? Is there other people here that you know? Anybody
3 that fits that description? (Many hands go up.)

4 No, let me just clarify that. I'm not talking
5 about knowing somebody else because you were here with them
6 and you have been talking in the hall since you came; right.
7 But you knew them before you got here. And if you could, I'm
8 going to ask you to raise your cards, and we will take down
9 the numbers. (Many cards go up.)

10 Juror number 5, juror number 21, number 20. As I
11 call your card, you can lay it down. 25, juror number 45 and
12 44, juror number 52. I think I said 21. Did I say 21?
13 Okay, juror number 70, juror number 72, juror number 8,
14 number 9, number 16, number 14, number 32, number 34, number
15 36, number 42, number 13?

16 A. (BY JUROR 13, MS. CAROL C. YOUNG) Number 13. I
17 took the other guy's that is not here any more.

18 BY MR. LUMUMBA:

19 Q. You raised the wrong card? Number 13, number 58,
20 59, 56, 62, 63, 64 and 60. Maybe the easier question would
21 be is there anybody that doesn't know anybody. (Several
22 cards go up.) No, I don't want to ask that. But let me
23 see.

24 Juror number 5. That is juror right up front here,
25 and that is-- who, juror number 5, what is your--

26 A. (BY JUROR 5, MS. LINDA YARBROUGH) 5. I'm Linda
27 Yarbrough. I know of a lady that I see that comes in and out
28 of my business where I work, but as far as personally knowing
29 her, I don't know her.

1 Q. Okay. So which juror is that? Do you remember?

2 A. Barnes, back in the back, Rose. I just know of
3 her. She worked at a place where I worked some years back,
4 and I just see her in and out. But as far as personally
5 knowing her, I can't say I personally know her.

6 Q. Okay, juror number 5 does not really--

7 A. --I don't really know her. I just know of her, I
8 would say.

9 Q. Doesn't really know Ms. Barnes, but she sees her
10 coming in and out of the business. And Ms. Barnes is over
11 here. What is your number, Ms. Barnes?

12 A. (BY JUROR 58, MS. ROSE M. BARNES) Number 58.

13 Q. Number 58, okay, all right. Okay, now we got, is
14 there anything about that relationship -- the real question
15 here, let me ask everybody the real question, and then I just
16 would like to know who, kind of like who you know. But the
17 real question here is that going to affect you in any way?
18 Say you and Ms. Barnes get in the jury room together. You
19 guys are not going to hook up together?

20 A. (BY JUROR 5, MS. LINDA YARBROUGH) No, because we
21 haven't hooked up with me seeing her at my business, so no.

22 Q. Okay, so you will be your own independent woman?

23 A. I am.

24 Q. Juror number 21, that is Juror Susan Partridge.
25 Okay, 21, who is it you know, Ms. Partridge?

26 A. (BY JUROR 21, MS. SUSAN C. PARTRIDGE) I know Pat
27 Turner and Curtis Davis.

28 Q. Pat Turner? And Pat Turner is juror number 8. I
29 can't see-- that is yours; right?

1 A. (BY JUROR 8, MS. PATRICIA A. TURNER) That is
2 mine.

3 Q. And who is the other person?

4 A. (BY JUROR 21, MS. PARTRIDGE) Curtis Davis.

5 Q. Number 32, okay. And I'm going to ask both of you,
6 that was the person you were going to say you knew?

7 A. (BY JUROR 8, MS. TURNER) Yes.

8 Q. Was that the person you were going to say you knew?

9 A. (BY JUROR 32, MR. CURTIS H. DAVIS) Yes.

10 Q. So we can have them all at the same time. Okay, is
11 it true that that would not affect you at all?

12 A. (BY JUROR 8, MS. TURNER) No.

13 Q. You can be independent? Now how close are you?

14 A. (BY JUROR 8, MS. TURNER) Curtis and I are pretty
15 close because we work with the youth at our church together.

16 Q. Okay, and how about you?

17 A. (BY JUROR 21, MS. PARTRIDGE) I know them through
18 my parents.

19 Q. Through your parents, okay. All right. Is
20 anybody-- Curtis, how about you? You going to be
21 independent?

22 A. (BY JUROR 32, MR. CURTIS DAVIS) Sure.

23 Q. Will you tend to listen to her more than other
24 people?

25 A. No.

26 (Laughter.)

27 Q. Definitely not, huh? Well, let me ask you this.
28 Would you tend to listen to her less? You wouldn't tend to
29 listen to her less; right?

1 A. (Juror Mr. Davis shakes his head.)

2 Q. Okay. How about you?

3 A. (Juror number 21, Ms. Partridge shakes her head.)

4 No.

5 Q. Okay. That is number 32; that is number 8 and
6 number 21. Okay.

7 Okay, now juror number 20, I believe, raised your
8 card, and that is Ms. Ballman?

9 A. (BY JUROR 20, MS. CINDY S. BALLMAN) Yes.

10 Q. Okay, Ms. Ballman, who is it you know?

11 A. Number?

12 A. (BY JUROR 42, MS. DENISE SHILSTONE) 42.

13 A. (BY JUROR 20, MS. BALLMAN) 42. 42 and Shelly. 52
14 and 42.

15 Q. Okay, juror number 20 knows--

16 A. 52 and 42.

17 Q. 52 and 42. Do all three of you know each other?

18 A. (BY JUROR 42, MS. DENISE SHILSTONE) I know Cindy.

19 A. (BY JUROR 20, MS. BALLMAN) Just from work.

20 A. (BY JUROR 52, MS. SHELLY R. NEIL) I know her. I
21 don't know her.

22 Q. Okay, how do you know, how do you know--

23 A. I know her because she calls me on breaks.

24 A. (BY JUROR 20, MS. BALLMAN) That's right.

25 Q. You work at the same place?

26 A. (BY JUROR 52, MS. NEIL) Yes. We work for the same
27 place. We don't work in--

28 A. (BY JUROR 20, MS. BALLMAN) --We work in the same--
29 none of us work in the same area.

1 A. (BY JUROR 52, MS. NEIL) We all work in the same
2 building.

3 A. (BY JUROR 42, MS. SHILSTONE) Not on the same
4 floor, not in the same department, just the same building.

5 Q. Okay. For the purposes of the Court Reporter,
6 juror number 20, number 52 and number 42 all work for the
7 same company?

8 A. (BY JUROR 20, MS. BALLMAN) Correct.

9 Q. Not necessarily in the same building.

10 A. (BY JUROR 42, MS. SHILSTONE) Right.

11 Q. And is there anything about that relationship that
12 would-- you know the questions. You know the question. Is
13 that going to affect you at all?

14 A. (JURORS 20, 42, AND 52 ALL SAY NO.)

15 Q. You are not going to lean toward each other any
16 more than anybody else? Or any less than any anybody else?

17 A. (BY JURORS 20, 42, AND 52) No.

18 Q. Now we go with juror number 25?

19 A. (BY JUROR 25, MS. EMMA J. PELL) I know 59.

20 Q. You know number 59. And number 59's name is?

21 A. (BY JUROR 59, MS. KARRIE L. TROTTER) Karrie
22 Trotter.

23 Q. Trotter, Ms. Trotter. And is it through a work
24 relationship or social relationship?

25 A. (BY JUROR 25, MS. PELL) We went to high school
26 together. We barely remember each other, but we met each
27 other.

28 Q. You said barely remember each other?

29 A. Yeah. We didn't know each other too well.

1 Q. All right. So that is not going to affect you--

2 A. No.

3 Q. --in terms of being independent?

4 A. (BY BOTH JURORS 25 AND 59) No.

5 Q. We ask these questions because you understand,
6 don't you, Ms. Trotter, that we are concerned about
7 independence as far as your independent thinking? Although
8 you talk to the other jurors, nobody-- we need a decision
9 from each person on the jury. That is all right too, Ms.
10 Pell?

11 A. (BY JUROR 25, MS. PELL) Fine.

12 Q. Then we have juror number 45. And juror number 45,
13 could you identify yourself, please?

14 A. (BY JUROR 45, MS. PHYLLIS D. ANDERSON) Right here.

15 Q. Okay, and who is it that you know?

16 A. The man in the front row over there used to work
17 for my husband.

18 Q. Okay.

19 A. No relationship at all; just know the face.

20 Q. Okay, that is juror number 11. That is juror
21 number 11, and his name is Winston Warden. Okay, Mr. Warden,
22 I didn't want to surprise you with that, but all we were
23 doing is juror number 45 was just indicating - and juror
24 number 45 for your information is Ms. Anderson - was just
25 saying that she knew you. That's all.

26 A. (JUROR 11, MR. WINSTON WARDEN turned around to
27 look.) (Laughter.) I didn't see her.

28 Q. Okay, how is it that you know him?

29 A. (BY JUROR 45, MS. ANDERSON) He used to work with

1 my husband.

2 Q. Worked with your husband, okay. So do you know him
3 well or just--

4 A. I just know the face because I saw him in there
5 with a bunch of other guys working with my husband.

6 Q. Okay. And there is certainly nothing about that
7 that would affect you?

8 A. Not at all.

9 Q. Okay.

10 If you remember that you remember her, that is not
11 going to influence you in the jury room, is it?

12 A. (BY JUROR 11, MR. WARDEN) I would have to find out
13 who her husband is.

14 (Laughter.)

15 Q. What is your husband's name?

16 A. (BY JUROR 45, MS. ANDERSON) Jerry.

17 A. (BY JUROR 11, MR. WARDEN) Jerry Anderson. Oh,
18 yeah.

19 Q. Is that going to cause a problem for you?

20 A. No.

21 Q. What we are asking is this: Are you going to be
22 more inclined to listen to her or less inclined to listen to
23 her if you are on the same jury together than you would
24 anybody else?

25 A. No. I go by the facts and that's it.

26 Q. Okay, very good.

27 Then we would ask the same question of juror number
28 44.

29 A. (BY JUROR 44, MR. DAVID COOPER) Juror number 60

1 was my son's soccer coach a couple of years ago.

2 Q. Juror number 60. Did he give your son a lot of
3 playing time?

4 A. Yeah, he played.

5 Q. So the same question to you?

6 A. No. It won't influence.

7 Q. Was that the only relationship? A soccer coach?

8 A. Right.

9 Q. Okay, thank you.

10 Same question to you. Do you remember him?

11 A. (BY JUROR 60, MR. DONALD G. SEYMOUR) Yes.

12 Q. His son a good player?

13 A. (By several unidentified jurors) Oohh.

14 A. (BY JUROR 60, MR. SEYMOUR) Yes.

15 A. (By unidentified juror) Put him on the spot.

16 Q. Okay, but really what I'm saying, is that something
17 that is going to affect you at all?

18 A. (BY JUROR 60, MR. SEYMOUR) No.

19 Q. Okay, good. And that is juror number 60 is Mr.
20 Seymour.

21 A. Yes.

22 Q. And juror number 44.

23 Okay. Okay, we have got number 52.

24 A. (BY JUROR 52, MS. SHELLY R. NEIL) Well, you
25 already did me once.

26 Q. I'm sorry.

27 Juror number 70.

28 A. (BY JUROR 70, MS. WILLIE M. SHOOK) I know Pat
29 Turner and Wanda Melvin.

1 Q. Juror number 70 knows Ms. Turner who has already
2 responded.

3 A. (JUROR 8, MS. PATRICIA TURNER) I didn't
4 (inaudible).

5 Q. And then you know who else?

6 A. (BY JUROR 70, MS. SHOOK) Ms. Melvin.

7 Q. Ms. Melvin. Ms. Melvin, what is your number? 64,
8 okay. And what is your relationship to both of them?

9 A. (BY JUROR 70, MS. SHOOK) I know them socially, and
10 Ms. Turner's husband built my house.

11 Q. And you have known them both for quite a while,
12 have you?

13 A. Several years.

14 Q. Several years. Any problem exercising
15 independence?

16 A. No, sir.

17 Q. Friendship wouldn't affect you?

18 A. No, sir.

19 Q. And friendship, you wouldn't lose a friendship,
20 would you? I mean what I'm saying is you would do what you
21 had to do to be a good juror?

22 A. Right.

23 Q. Okay. Is that the same, Ms. Turner?

24 A. (BY JUROR 8, MS. PATRICIA TURNER) Yes.

25 Q. Same with you, Ms. Melvin?

26 A. (BY JUROR 64, MS. WANDA G. MELVIN) Yes.

27 Q. Okay, the other people who knew each other was 72.
28 Juror number 72. And that's--

29 A. (BY JUROR 72, MS. BARBARA ABERNATHY) And I know

1 number 13.

2 Q. Okay, juror number 13 by the way is Ms. Carol
3 Young, and juror number 72 for the record is Barbara
4 Abernathy. Is that correct?

5 A. Yes, sir.

6 Q. And Ms. Abernathy, how is it that you know Miss
7 Carol?

8 A. Well, I have known her so long I don't know.

9 Q. --Carol Young, Carol Young, right.

10 A. I have just known her for about 20 years.

11 Q. Only 20 years, okay. What relationship do you know
12 her in? Friends?

13 A. Through a friend.

14 Q. Okay. You guys talk a lot or socialize a lot
15 together?

16 A. The first time I have seen her in about four or
17 five years.

18 Q. Oh, okay. So that relationship wouldn't affect you
19 at all?

20 A. No.

21 Q. Same with you?

22 A. (BY JUROR 13, MS. CAROL YOUNG) No.

23 Q. Okay, Ms. Young answered the same with her, that
24 that is not a relationship that would affect her. Okay.
25 That was 72 and number 13.

26 Have we spoken to 8 yet? Juror number 8. Yeah, we
27 have done spoke to 8 a bunch of times.

28 A. (By Unidentified Juror) 8 knows everybody.

29 Q. Juror number 9. And who is it that you know?

1 A. (BY JUROR 9, MS. REBECCA I. O'NEAL) I went to high
2 school with Shelly Slocums. I don't know her name now.

3 A. (BY JUROR 52, MS. SHELLEY R. NEIL) That is the
4 infamous number 52 back here.

5 Q. Oh.

6 A. (BY JUROR 9, MS. O'NEAL) I haven't seen her since
7 graduation. I just--

8 A. (BY JUROR 52, MS. NEIL) --Apparently I was boring
9 is all I can figure.

10 Q. That's a reasonable assumption. Okay, number 52
11 you knew her in high school?

12 A. (BY JUROR 9, MS. O'NEAL) Yes.

13 Q. Is that going to affect you at all?

14 A. (BY JUROR 52, MS. NEIL) No.

15 Q. How about you?

16 A. (BY JUROR 9, MS. O'NEAL) No.

17 Q. Were you guys close?

18 A. (BY JUROR MS. O'NEAL) No.

19 Q. Okay, high school.

20 Then we have got, we are going to move on here, and
21 we have got juror number 16. Who is it you know?

22 A. (BY JUROR 16, MR. DAVID JOEL DOBSON) Clay
23 Dedeaux.

24 Q. That is number 62? Okay, juror number 16 knows Mr.
25 Dedeaux. Was that a school situation?

26 A. Yes.

27 Q. And it has been a while since you have been in
28 school; right?

29 A. Yes.

1 Q. Okay, have you guys socialized since then?

2 A. No.

3 Q. No, okay. Is there anything about that
4 relationship that would affect you?

5 A. No, sir.

6 Q. Mr. Dedeaux, do you know anyone else other than Mr.
7 Dobson?

8 A. (BY JUROR 62, MR. JULIAN C. DEDEAUX) No, sir.

9 Q. Mr. Dobson, what was your number again? I'm sorry.

10 A. (BY JUROR 16, MR. DOBSON) 16.

11 Q. Okay. Juror number 14, we may have spoken to
12 already?

13 A. (BY JUROR 13, MS. CAROL C. YOUNG) 13, I am 13. 14
14 is not really here. There is no 14.

15 Q. Oh, is it? (Laughter.) 14 is really 13?

16 A. Correct.

17 Q. Okay. Number 32. 34, I'm sorry. We have already
18 spoken to 32. 34.

19 A. (BY JUROR 34, MR. DANIEL L. DAVIS) Right here.
20 Mrs. Shilstone as a customer.

21 Q. Okay, Ms. Shilstone. Okay, she is a customer?

22 A. Yes.

23 Q. And what was your number again? I'm sorry.

24 A. 34.

25 Q. And Ms. Shilstone, what was your number?

26 A. (BY JUROR 42, MS. DENISE SHILSTONE) 42.

27 Q. 42, okay. And you just know him as a business
28 friend?

29 A. Uh-hum.

1 Q. It wouldn't affect you?

2 A. No.

3 Q. Okay, we need to know about juror number 36. Have
4 we asked 36 yet?

5 A. (BY JUROR 36, MR. JOHNNY F. LACKEY, II) No. I
6 know Mr. Seymour.

7 Q. You know Mr. Seymour. How is it that you know Mr.
8 Seymour?

9 A. Through IBW.

10 Q. Oh, okay. You both do electrical work?

11 A. Right.

12 Q. Both electricians?

13 A. Right.

14 Q. In the brotherhood?

15 A. Right.

16 Q. Okay, and do you see each other a lot, on a regular
17 basis?

18 A. No. Just occasionally.

19 Q. Would that affect your independence?

20 A. No, it wouldn't.

21 Q. So you could argue with Mr. Seymour if it came time
22 to it?

23 A. Oh, yes. I have done it before.

24 Q. Same with you, Mr. Seymour; is that right?

25 A. (BY JUROR 60, MR. DONALD G. SEYMOUR) Yes.

26 Q. Okay, it wouldn't affect you?

27 A. No.

28 Q. Okay, so that is 36 and 60.

29 Mr. Seymour, I might as well ask you this. There

1 are several people have said they know you. Do you know
2 anybody else in here other than the two that have already
3 mentioned--

4 A. (BY JUROR 60, MR. SEYMOUR) I think that covers it.

5 Q. That covers it? Okay. Okay, that will do it.

6 56?

7 A. (BY JUROR 56, MS. CATHERINE BLAKELY) Yes.

8 Q. Yes, that is Ms. Blakely. Are you Ms. Blakely?

9 A. Blakely. I know 63.

10 Q. You know number 63?

11 A. Yes. He lives in the neighborhood with, used to
12 live in the neighborhood with my daughter.

13 Q. And number 63 is Mr. James. Will it affect you,
14 Mr. James?

15 A. (BY JUROR 63, MR. RON JAMES) No.

16 Q. Okay. So you think you can argue with Ms. Blakely
17 if it came down to it, huh?

18 A. Huh?

19 (Laughter.)

20 Q. Okay, do you think you could be independent as a
21 juror?

22 A. Yes.

23 Q. Regardless of who else-- is that true of you too,
24 Ms. Blakely?

25 A. (BY JUROR 56, MS. CATHERINE BLAKELY) Yes.

26 Q. Okay, very good. How long have you known each
27 other?

28 A. How long have I known him? About 5 years.

29 Q. About 5 years.

1 Okay, I know that takes care of 60 and it takes
2 care of 63. Anybody else you know, Mr. Blakely-- I mean, I'm
3 sorry, not Mr. Blakely. Mr. James?

4 A. (BY JUROR 63, MR. RON JAMES) James. No, but I
5 have a question though.

6 Q. What is that?

7 A. My mom got killed by a drunk driver about 5 years
8 ago. They gave the dude 25 years which I don't think was
9 right, you know.

10 Q. Okay. So this is, Mr. Blakely [sic], you are
11 number 63. And you are bringing to our attention that your
12 mother was killed--

13 A. (By unidentified person) --James.

14 Q. James, Mr. James, I'm sorry. Mr. James, you are
15 bringing it to our attention that some time ago your mother
16 was killed by a drunk driver?

17 A. (BY JUROR 63, MR. JAMES) Yes.

18 Q. Okay, and that was one of the questions we had
19 asked before. And they gave him some time in jail; is that
20 right?

21 A. Yeah, but (inaudible).

22 **BY THE COURT:** Would you stand up, Mr. James.
23 I can't hear you.

24 A. I think he spent about two years in jail, and they
25 let him out on probation.

26 Q. Oh, is that what happened? Okay. Is there
27 something about your experience that is going to make you
28 prejudiced against this case here?

29 A. No, it ain't. Not with him, no.

1 Q. Okay. But you have a problem with that. You
2 thought you had a problem with that?

3 A. Yeah.

4 Q. Do you know anybody else here other than Ms.
5 Blakely?

6 A. No.

7 Q. Okay.

8 Anybody-- some people we crossed off the list
9 because people have identified you as knowing people. Is
10 there any people who raised their sign that said that they
11 knew other people that knows somebody other than we have
12 already talked about? (No response).

13 BY JUROR 39, MR. THOMAS FRANKLIN: Your Honor,
14 I would like to request a comfort break.

15 BY THE COURT: Okay. We will take about 10
16 minutes. How about that?

17 (FOLLOWING A MORNING RECESS ON MARCH 23, 1999,
18 VOIR DIRE CONTINUED IN OPEN COURT WITH ALL COUNSEL,
19 THE DEFENDANT AND THE JURY PANEL PRESENT:)

20 BY THE COURT: Everybody back?

21 BY SEVERAL JURORS: No.

22 BY A JUROR: Number 11 ain't back.

23 BY THE COURT: There he is. All right, sir.

24 BY MR. LUMUMBA: Should I proceed, Judge?

25 BY THE COURT: Yes, sir.

26 BY MR. LUMUMBA: Thank you very much.

27 CONTINUED VOIR DIRE BY MR. LUMUMBA:

28 Q. Ms. Hilton is juror number 57. Ms. Hilton?

29 A. (BY JUROR 57, MS. JENNIFER D. HILTON) Right here.

1 Q. Okay, Ms. Hilton, you have also indicated that you
2 were actually the victim of a crime. Is that correct?

3 A. No, my [REDACTED] was.

4 Q. Your [REDACTED] was a victim of a crime?

5 A. Yes, sir.

6 Q. And thank you for clarifying that. And that was a
7 serious crime, the crime of rape?

8 A. Yes, sir.

9 Q. Okay, how long ago did that happen?

10 A. About four or five years ago, but the family was
11 not told until after the crime had been committed and he went
12 to trial, so we didn't know anything about him being
13 convicted or anything. So we weren't really involved in the
14 emotional part of it until after the trial.

15 Q. So you don't think there is any, really any kind of
16 traumatic experiences which would affect you from that
17 decision?

18 A. No, sir.

19 Q. And in no way are you going to let anything from
20 that carry over to this?

21 A. No, sir.

22 Q. Death penalty is another question which you have
23 indicated a very, kind of like a strong view. I think you
24 said you strongly support the death penalty. Is that
25 correct?

26 A. If warranted, yes, sir.

27 Q. If warranted. You have heard all that discussion
28 about different circumstances and all that kind of stuff;
29 right?

1 A. Yes.

2 Q. Okay, and you know more now probably from those
3 instructions about the way it is supposed to happen than you
4 did when you first filled out the form; right?

5 A. Right.

6 Q. Do you feel that and remembering at all times just
7 because you know how it is supposed to happen in court, that
8 doesn't mean that you as an individual have got to compel
9 your behavior to it. It just means that if you don't feel
10 you can, you have got to let us know; right? Do you
11 understand what I'm saying? Then we can make a choice or the
12 Judge can make a choice whether you can sit. Do you
13 understand what I'm saying?

14 A. (Juror 57, Ms. Hilton nods her head.)

15 Q. So that understanding all that, would it be your
16 representation to us that you can follow the law in all
17 reports?

18 A. Yes, I can follow the law.

19 Q. Okay, and you would not go into the things of any
20 case-- here again, I'm not talking about this one, but any
21 case you would not go into the death penalty saying or
22 leaning toward death?

23 A. No.

24 Q. Just because someone had been killed?

25 A. No.

26 Q. Okay, thank you very much. I appreciate that
27 answer.

28 And I think that Ms. Trotter -- there just is an
29 indication here that you were victim of a crime or somebody

1 in your family was? That is Trotter, seat number 59?

2 A. (BY JUROR 59, MS. KARRIE L. TROTTER) Oh. Well, my
3 parents were robbed. They weren't home. The house was
4 burglarized.

5 Q. But they actually were not there?

6 A. No. Nobody was there.

7 Q. And certainly you told the Judge that you wouldn't
8 have any problems because of that, and you won't, will you?

9 A. No. I don't have any problems.

10 Q. Okay, and I don't want to repeat all the questions,
11 but you also expressed a strong view in favor of the death
12 penalty. Is that correct?

13 A. That's correct.

14 Q. And you also had some concerns about tax dollars.
15 Is that right?

16 A. Yes.

17 Q. And.

18 A. Well, actually my views have changed since I have
19 been here. I didn't know much about it, and I still support
20 the death penalty, but I didn't realize there was so many
21 steps and everything involved. I would have to follow those
22 steps.

23 Q. Okay, but not only would you have to, would you
24 want to?

25 A. Oh, yes. Definitely.

26 Q. Okay, you say your views have changed, huh? Okay,
27 and understanding those steps are put in place because the
28 law has a respect for life; right?

29 A. Right. Right.

1 Q. And it is very careful about people's lives. So
2 that is why the only way it works is if jurors are very
3 careful about people's right not to be convicted for crimes
4 they didn't commit; right?

5 A. Right.

6 Q. And jurors are very careful about life; right? And
7 you are willing to do that?

8 A. Yes.

9 Q. Thank you very much. Your tax dollars statement
10 notwithstanding; right?

11 A. Excuse me?

12 Q. Your tax dollars statement notwithstanding, you
13 still want to do it?

14 A. Right. Right.

15 Q. Okay. And juror number 60 -- we will move on and
16 go ahead. We have already talked. We have already talked,
17 juror number 60, and you have already expressed your views on
18 the death penalty. You are not a victim of any kind of crime
19 or anything, are you?

20 A. (BY JUROR 60, MR. DONALD G. SEYMOUR) Huh?

21 Q. You are not a victim of any kind of crime?

22 A. No.

23 Q. Okay. And actually, what you indicated in your
24 questionnaire was that actually-- this is before you knew
25 anything about the procedures; is that correct?

26 A. (No response.)

27 Q. When you filled out the questionnaire, you didn't
28 know anything about the procedures here at court?

29 A. No. What does that, what it states on the

1 questionnaire?

2 Q. Well, it just states that you believe that the
3 penalty should only be in effect for someone caught in the
4 act of a crime. That's what you put; is that correct?

5 A. I was more specifically, that is the death
6 penalty.

7 Q. That is what you believe?

8 A. A specific statement, yes.

9 Q. That is what you believe. And the crime is not
10 just-- and not just for a situation where a person, where it
11 just may be surmised from other factors. Well, anyway you
12 said for a person caught in the act of a crime. That was
13 your view; is that correct?

14 A. True. That was my question--view as far as being
15 specific about what you were asking me.

16 Q. Okay, so you-- and I appreciate that. Excuse me,
17 because what you were saying to me all along: Could you be a
18 little more specific? Is that what you're saying?

19 A. Exactly.

20 Q. Because you were very specific in your response in
21 that.

22 A. Yeah, I don't feel like just because there is a
23 death that has happened, that a person should be put to death
24 if convicted for it.

25 Q. Thank you very much.

26 There are a number of people who indicated they
27 have been in law enforcement, and I noticed that Mr. Dedeaux
28 -- is that how you pronounce your name?

29 A. (BY JUROR 62, MR. JULIAN C. DEDEAUX) Yes.

1 Q. Okay, Mr. Dedeaux, juror number 62. Are you still
2 in law enforcement? You are still doing security?

3 A. Yeah, I do corporate security for a local casino.

4 Q. And Mr. Dedeaux, before that, you were actually a
5 Harrison County Sheriff's Deputy; is that correct?

6 A. That's correct.

7 Q. Do you have any kind of meeting in Mississippi
8 where Sheriff's people from all over different counties come
9 together? Do you have that?

10 A. I have not been a part of it. I'm not aware of
11 any.

12 Q. Okay, I'm not saying there is. I am just trying to
13 see. Okay, but in any event, sheriffs -- this case
14 originated in Montgomery County; right? And it may turn
15 out-- well, actually I'm not sure. But other law enforcement
16 officials - they may be state law enforcement officials; they
17 may be from other parts of the system - will come and
18 testify. And it is kind of like the same question I put to
19 Ms. Pell, you know, while ago. You are a brother in law
20 enforcement; is that correct?

21 A. Yeah.

22 Q. Well, at least you used to be, and you are still
23 doing security?

24 A. Right.

25 Q. Would you tend to believe a law enforcement person
26 before you believe anyone else?

27 A. No, sir.

28 Q. Okay. Having been law enforcement, you know they
29 are human like everybody else?

1 A. That's exactly-- I have seen law enforcement
2 personnel put in jail just as much as citizens or criminals,
3 so I have no sides on that.

4 Q. Okay, so and when you say criminal, you mean
5 somebody that has been convicted?

6 A. Right.

7 Q. You wouldn't assume somebody is a criminal just
8 because they are here in court?

9 A. Exactly.

10 Q. Okay, and I appreciate that. So basically what we
11 are saying, they are human and they make mistakes like
12 everybody else?

13 A. That's right.

14 Q. Sometimes they are right; sometimes they are wrong?

15 A. Right.

16 Q. You wouldn't have any problem with that statement?

17 A. No.

18 Q. Okay. I appreciate that, and I don't have any
19 other questions, Mr. Dedeaux. So there is nothing about that
20 would make you uncomfortable?

21 A. No.

22 Q. And the next thing just by-- is there anyone else
23 here still working in law enforcement or security? Anybody
24 else? Anybody else that actually was a law enforcement
25 officer still here?

26 Okay, now I noticed several people, if you can show
27 me by a raise of hands, who had relatives -- Ms. Pell, you
28 don't have to raise yours. Who had relatives that were in
29 law enforcement; just raise your cards.

1 (Several numbers go up.)

2 And I'm just going to ask you this question. I
3 think you have already been asked this, but the same
4 questions that I -- you can show by nodding your head. The
5 same questions I just put to the gentleman, Mr. Dedeaux,
6 would be the ones that I would put to you. Anybody feel that
7 they would favor the testimony of a law enforcement officer
8 merely because they -- I don't know that has ever actually
9 been put to you exactly like that. We are talking about live
10 testimony now. We are not just saying well, because that
11 person was a law enforcement officer. You have already told
12 us you are not going to come in here and just be
13 pro-prosecution because they are a law enforcement officer.
14 But now the question becomes and that is the question we put
15 to Ms. Pell for the first time: Would you tend to - and we
16 can start off with juror in seat number 9. That is Ms.
17 Neal.

18 A. (BY JUROR 9, MS. REBECCA I. O'NEAL) O'Neal.

19 Q. Is it O'Neal?

20 A. O'Neal.

21 Q. Okay. Would you tend to believe a law enforcement
22 officer's testimony just because they are a law enforcement
23 officer?

24 A. No.

25 Q. Would you tend to believe it more than another
26 person who is not, whatever they are?

27 A. No.

28 Q. Okay. And I think you had raised your sign also,
29 Ms. Ladner. That is Ms. Betty Ladner. We have a Connie

1 Ladner, a Betty Ladner, and another kind of Ladner. You guys
2 are not related, are you?

3 A. (BY JUROR 6, MS. BETTY E. LADNER) No.

4 Q. Okay.

5 A. Actually I am related to the Connie Ladner that was
6 here.

7 Q. You are related to her?

8 A. Yeah.

9 Q. Oh, okay. That is not going to affect you?

10 A. No.

11 Q. Go ahead and tell me about the response to my
12 question about police officers. Are you going to tend to
13 believe another police officer?

14 A. No.

15 Q. Thank you. You think you can follow the
16 instructions on whatever that is; right?

17 A. Yes.

18 Q. Okay. Someone else back here had their sign up.
19 How about you, Mr. Crockett?

20 A. (BY JUROR 28, MR. EUGENE CROCKETT, JR.) No, sir.
21 People are human to me.

22 Q. Okay, the next row back there.

23 A. (BY JUROR 53, MS. DONNA M. SMITH) No, sir. I--

24 Q. Could you hold up your sign one more time, please?

25 A. 53.

26 Q. And that is number 53?

27 A. I would just listen. I mean I wouldn't say just
28 because they are a police officer, I will listen to them more
29 than somebody else.

1 Q. And Ms. Smith, who was it in your -- your father
2 is--

3 A. My father. He worked for Harrison County Sheriff's
4 Department.

5 Q. He was with the Sheriff's Department?

6 A. Uh-hum.

7 Q. He worked as a deputy?

8 A. Uh-huh.

9 Q. What was his rank?

10 A. I really don't know. I didn't even know he was in
11 it until his death.

12 Q. Okay, and right next to you somebody raised their
13 sign. You didn't raise your sign?

14 A. (BY JUROR 52, MS. SHELLY NEIL) No sign raising
15 here.

16 Q. Okay. Anybody else back there raise their sign?
17 Okay. Over here we have number 18 which is Ms. Weiss.

18 A. (BY JUROR 18, MS. RAYANNE M. WEISS) My uncle is
19 currently a volunteer sheriff, and that wouldn't affect me,
20 but you know, as y'all were sitting here talking, I don't
21 think it would affect me either, but, you know, my job every
22 day I have to get releases from the police and from the
23 courts and I report that, and I understand how the legal
24 system works. But to me, a law enforcement or a court
25 person, they are human, but they are also officials who
26 release what they consider to be the facts. So I might tend
27 to listen to them a little bit more.

28 Q. Okay. Hold that thought just a second.

29 (Pause while Mr. Lumumba confers with

1 co-counsel.)

2 Q. That had nothing to do with the question, okay. So
3 basically what you are telling us, because of your job and
4 what you do all the time-- folks who don't know, you are a
5 journalist; right?

6 A. (BY JUROR MS. WEISS) Right.

7 Q. And you are saying that you get facts from law
8 enforcement officers?

9 A. Right.

10 Q. And you may tend to pay more attention to what they
11 are saying and give it -- I guess the term would be give it a
12 little more credibility?

13 A. Right.

14 Q. Because of your job, you give them credibility?

15 A. Right. I have to wait to complete the story until
16 I--

17 Q. --All right, well, that may be a problem. I just
18 want to explore it just a little bit. I want to explore it
19 because, you know, the average citizen doesn't have a chance
20 to give you information all the time. But are you telling us
21 that because they are police officers, it may creep into your
22 consciousness if two people are on the stand and you may tend
23 to believe the one that is a police officer a little more
24 because of your--

25 A. Right, what I do every day.

26 Q. Because of what you do every day. And would it be
27 safe to say that that is, that has been made so relevant that
28 you felt it was necessary to raise it; correct?

29 A. Right.

1 Q. Okay, and is one of those things-- I know you have
2 told us before about something else. Is it one of those
3 things that you really couldn't make an absolute commitment
4 on as to what would happen?

5 A. Right.

6 Q. You would try to follow the rules?

7 A. I would; oh, yes.

8 Q. But you may not?

9 A. I couldn't say, but I would say more than the
10 average person I would have a tendency to listen to someone
11 considered to be an expert, legal person.

12 Q. Is there a chance that you may not be able to
13 follow that rule in terms of weighing in terms of it?

14 A. I didn't follow you. I would try to follow the
15 rules that were set out on that sort of person.

16 Q. Okay, I understand that. I don't want to be
17 accused of harassing you, but I am just trying to get a
18 little bit clearer. But you did raise it?

19 A. Right.

20 Q. Is my point. Do you, is it possible that it could
21 affect your opinion?

22 A. Yes.

23 Q. It is? That's why you raised it?

24 A. Uh-hum.

25 Q. Okay. Thank you very much. Okay, and that is Ms.
26 Weiss.

27 Somebody else on that row raised their number.
28 Number 16, Mr. Dobson. Who did you say was an officer?

29 A. (BY JUROR 16, MR. DAVID JOEL DOBSON) My uncle.

1 Q. Your uncle. How long has he been an officer?

2 A. I will say 14 years. He is in investigations.

3 Q. He is in investigations for the federal?

4 A. Federal prison.

5 Q. For the federal prison system?

6 A. Yes, sir.

7 Q. Does he work here in Mississippi?

8 A. No, he works in Houston.

9 Q. Oh, in Houston. Do you talk to him very often?

10 A. Yes, sir.

11 Q. Okay, does he talk to you about things that you
12 think would affect you in this case?

13 A. No. No, he-- nothing I would think. He has told
14 me about some of the cases, and like he has told me there is
15 some people in the federal prison that work there that is
16 just as wrong as the criminals.

17 Q. Oh, okay, so people in the federal prison system
18 are just as wrong as the people that is in criminal system
19 sometimes?

20 A. Yes, sir.

21 Q. But in any event, so based upon that, you would be
22 able to sit there and give no more credit to a person's
23 testimony just because of their position?

24 A. No, sir.

25 Q. Is that true?

26 A. Yes, sir.

27 Q. Okay. I appreciate it.

28 A. I have another question. When I was in the Marine
29 Corps, I was qualified as a chaser.

1 Q. Chaser?

2 A. Yes, sir. That is, the prisoners were put in our
3 custody (inaudible).

4 BY THE COURT REPORTER: I can't hear.

5 BY THE COURT: Could you speak up, Mr.

6 Dobson. She can't hear you, and I can't either.

7 A. (BY JUROR 16, MR. DOBSON) When I was in the Marine
8 Corps, I was qualified as a chaser, and that was one of the--
9 prisoners were put in our custody. And I was just going to
10 let him know that. I didn't know if that was considered as
11 law enforcement or not.

12 BY THE COURT: I think for the purposes of
13 this it would be. Thank you, Mr. Dobson.

14 BY MR. LUMUMBA:

15 Q. Okay, Mr. Dobson, did you have any kind of
16 experiences in there which might prejudice you against a
17 person accused of a crime?

18 A. No, sir.

19 Q. Okay. Thank you for raising it.

20 A. Thank you, sir.

21 Q. And you have already answered the other questions.
22 Okay.

23 Someone else on this row or the next row? Number
24 37, juror number 37. And that juror's name is Hall.

25 A. (BY JUROR 37, MS. GWYNNE F. HALL) My ex-husband is
26 a police chief in West Columbus, South Carolina.

27 Q. And do you understand the question I have been
28 asking everyone else?

29 A. Yes, sir. Police officers are just like everybody

1 else. Some are honest and some are not.

2 Q. Okay, so that is not going to affect your
3 evaluation?

4 A. No, sir.

5 Q. Very good.

6 Number 57, and that is the young juror who I just
7 talked to, and that is Ms. Hilton; right?

8 A. (BY JUROR 57, MS. JENNIFER D. HILTON) Yes, sir.

9 Q. Could you stand up so the Court Reporter can hear
10 you, Ms. Hilton.

11 A. My uncle was a state trooper, but he is a retired
12 trooper for here, so that would not affect my decision.

13 Q. And you don't think that police officers are
14 necessarily going to tell the truth more than anybody else?

15 A. No.

16 Q. Thank you.

17 Anyone else? And it's not just a question of
18 telling the truth because we have got a whole lot of things
19 about accuracy and everything else. Everybody understand?
20 Okay, I think we have covered everybody on that question.

21 Thank you, Mr. Dedeaux.

22 Okay, now Ms. Melvin? You had answered your
23 questionnaire and I think you indicated -- Ms. Melvin, by the
24 way, is juror number 64.

25 A. (BY JUROR 64, MS. WANDA G. MELVIN) Uh-hum.

26 Q. You said in most murder cases, here again, we asked
27 these academic questions, you understand, but in most murder
28 cases the death penalty should be imposed. That was what you
29 put on your form?

1 A. I think I put on there it depends on the
2 circumstances.

3 Q. Okay. Well, in any event -- no, you didn't.

4 A. I didn't?

5 Q. But that is okay; that doesn't make any
6 difference. That doesn't make any difference because, you
7 know, basically--

8 A. --Well, it depends on the case.

9 Q. Yeah. Okay. That is what you believe, isn't it?

10 A. That's what I believe.

11 Q. Okay, that is fine. So thank you very much,
12 appreciate it. You don't have any biases really for or
13 against?

14 A. No.

15 Q. Okay. And juror number 67 is Mr. Bradley. Mr.
16 Bradley. Oh, 67.

17 A. (By Unidentified Juror) 67 is a Ms.

18 Q. I'm sorry. Who is 67?

19 A. (BY JUROR 67, MS. ROBIN D. SWANIER) I am.

20 Q. Okay, I have got it down as William Bradley.

21 BY MR. EVANS: That was 68.

22 A. (BY JUROR 67, MS. SWANIER) Well, you call him. I
23 will leave.

24 (Laughter.)

25 Q. Okay, that is juror number 68. Is he here?

26 BY MR. EVANS: He was excused.

27 BY MR. LUMUMBA: Oh, he was excused, okay. I
28 don't have a questionnaire for 67.

29 A. (BY JUROR MS. SWANIER) I send it in a month in

1 advance.

2 Q. Okay. I'm not suggesting you didn't send it in. I
3 am just saying I don't have it. I didn't have quite a few of
4 them. Thank you. We will come back.

5 Mr. Hamiter. I just got your questionnaire just a
6 little while ago. The last page is missing from my
7 questionnaire. Did you have a space on it when you filled it
8 out which asked questions of express your views on the death
9 penalty?

10 A. (BY JUROR 69, MR. RHETT D. HAMITER) Yes, I did.

11 Q. Did you fill it out?

12 A. Yes.

13 Q. I will have to catch up with that. But is your
14 views anything that will stop you from doing what you said
15 you had to do?

16 A. No, sir.

17 Q. Okay. And that is true even though you strongly
18 favor the death penalty; is that correct?

19 A. Yes, sir.

20 Q. And you understand, we have said this a million
21 times. You don't have any problem with it. I remember you
22 rose earlier to tell us about something. Was that about a
23 relationship to law enforcement officer or what was it?

24 A. No, sir. It was in response to a question about
25 something happened in the past like well, my family's house
26 was burglarized several times.

27 Q. Okay. Thank you very much. Okay, and I think you
28 also indicated you served on a jury trial before?

29 A. Yes, sir.

1 Q. And the verdict was-- what was the verdict in that
2 trial?

3 A. Not guilty.

4 Q. Okay, and you know, actually I found out I have two
5 copies of a questionnaire of you. One of them does have a
6 back on it. And what you indicated is that in most cases the
7 death penalty should be applied if there was murder, and that
8 was your view expressed before you were here; right?

9 A. Yes, sir.

10 Q. At this particular point in time is that, you know,
11 you understand that that is not necessarily what the law
12 says?

13 A. Yes, sir.

14 Q. Okay, and you are willing to comply with what the
15 law says?

16 A. Yes, sir.

17 Q. And Ms.-- and I remember asking you questions
18 earlier. Ms. Shook, is it?

19 A. (BY JUROR 70, MS. WILLIE M. SHOOK) Yes.

20 Q. That is number 70. Yours is another questionnaire
21 I just received not too long ago. But in any event, your
22 view is it just depends on the case?

23 A. Depends on the case.

24 Q. So you wouldn't have any problems finding the
25 things that the Court said that you should follow?

26 A. No, sir.

27 Q. In any case and particularly on what we are talking
28 about here as to prosecution proving its case even to start
29 off with; correct?

1 A. Yes, sir.

2 Q. Okay, thank you, Ms. Shook. And you are not a
3 victim of a crime or anything like that?

4 A. No.

5 Q. Ms. Shook, I noticed that you went to the
6 University of Mississippi?

7 A. Yes.

8 Q. And to the University of Southern Mississippi. You
9 received degrees from these institutions?

10 A. Yes, sir.

11 Q. What kind of degrees did you get?

12 A. I have a bachelor of fine arts degree from the
13 University of Mississippi. I have a certification degree to
14 teach mathematics and art and gifted-- no, from USM and then
15 gifted education from Ole Miss. And then I have a Master's
16 Degree in Administration and Curriculum from USM.

17 Q. Okay, what school-- do you teach or do you--

18 A. I teach.

19 Q. Okay, and what grades do you teach?

20 A. 7th and 8th grade.

21 Q. What school?

22 A. Hancock High School.

23 Q. Hancock High School. And excuse me; where is that
24 located?

25 A. It's at Stennis Airport, north of Bay Saint Louis.

26 Q. Okay.

27 A. It's a little bit, about a mile north of I-10,
28 (Word inaudible) Pass Christian.

29 Q. Okay, and you have been doing that for how long?

1 A. 14 years.

2 Q. 14 years. Thank you very much.

3 Ms. Abernathy, I think we have talked already, and
4 you didn't fill out the back of your form as it related to--
5 it indicated something about fully explain your position on
6 the death penalty.

7 A. (BY JUROR 72, MS. BARBARA ABERNATHY) Did I not
8 fill it out?

9 Q. Well, actually it's not signed either so possibly
10 you didn't see it, or it may not have even been attached; I
11 don't know. But is there anything about your view that would
12 stop you from doing what is required in terms of--

13 A. No, sir.

14 Q. Okay. Thank you.

15 Ms. Beeson?

16 A. (BY JUROR 73, MS. MARCIA W. BEESON) Yes.

17 Q. I don't know if we discussed this already, but I
18 understand your husband's cousin was robbed and murdered?

19 A. No.

20 Q. That is not right?

21 A. No. Not unless it happened this morning.

22 (Laughter.)

23 Q. Well, excuse me. Strike that.

24 A. Do you know something I don't know?

25 Q. No.

26 A. Oh, my husband's cousin?

27 Q. Oh, no, yeah, that's what I said. Your husband's
28 cousin. Is that true?

29 A. Yes.

1 Q. Oh, okay. You thought I was saying your husband.
2 Oh, okay. No, no. Okay, the only thing is that person, was
3 that a cousin that you dealt with frequently?

4 A. I barely knew him. We had just gotten married.

5 Q. Okay, and was anything-- did you get involved with
6 the case in any way, going to the trial or anything else?

7 A. No.

8 Q. Okay, and is there anything about that that would
9 have a problem, cause a problem for you?

10 A. No.

11 Q. And I think already-- thank you very much.

12 Mr. Collins, number 75, how are you doing?

13 A. (BY JUROR 75, MR. WILLIAM E. COLLINS) Great.

14 Q. Okay, hasn't anybody asked you any questions, have
15 they?

16 A. I just lead a charmed life, I guess.

17 (Laughter.)

18 Q. Okay, did any of these issues that we have raised
19 really affect you in terms of, you know, raise another
20 question?

21 A. No, sir.

22 Q. Okay, thank you. I notice that you also have gone
23 to college. You went to Wallace State Junior College?

24 A. Yes.

25 Q. Okay, and you right now have a degree in
26 electronics technology; is that correct?

27 A. Yes.

28 Q. And who is your employer?

29 A. I work for (inaudible).

1 BY THE COURT REPORTER: I couldn't hear him.

2 BY THE COURT: Could you stand up, Mr.

3 Collins, so she can hear you.

4 A. (BY MR. COLLINS) I work for the Sun Herald.

5 Q. Okay. It is actually right here?

6 A. That's correct.

7 Q. And you seem to be in some kind of specialty
8 position?

9 A. I'm a systems specialist. We take care of the
10 computer and the building.

11 Q. Okay, so you don't really get involved in the
12 reporting of the news?

13 A. No.

14 Q. And are you kind of like, are you a supervisor, or
15 do you have a specific job yourself?

16 A. I am all over the building. It is kind of hard to
17 describe really.

18 Q. Okay, thank you very much.

19 BY MR. LUMUMBA: Okay, we deal and we are
20 coming into this phase of the case here. I just have a
21 couple of other questions I would like to ask, and then I
22 will move on. In any given case one might come into
23 confrontation or hear evidence, you know; people might get to
24 the stand or otherwise, and you may see things which are
25 relatively emotional. Does everyone understand what I'm
26 saying? And for instance we, you know, sometimes you may see
27 pictures which raise emotions. Do you understand what I'm
28 saying? Like for instance, there may be pictures with some
29 bleeding on it or other things which are not happy things to

1 see. Does everyone understand where I'm at? And the issue
2 is, and sometimes it is hard for people to emotionally
3 divorce themselves from that, and that's what this question
4 is directed to. The issue here is not whether the picture is
5 gruesome really, okay. The issue is did Mr. Flowers, and our
6 contention is that we submit that he is not guilty of this
7 crime. Do you understand? It's not a question of the
8 pictures. It's a question of the incident and who, if
9 anyone, caused the incident. Will everybody agree with
10 that?

11 Okay, so does everyone feel, does anybody feel you
12 are going to have a problem with that? Is anybody going to
13 see a picture or something like that and have an emotional
14 reaction to the point that they will cease to be objective?
15 If you feel that that is a problem, please raise your hand.

16 And that might also happen in terms of witnesses.
17 Do you understand what I'm saying? Someone may be reliving,
18 you know, when they found out about something, right, and
19 about the loss of a loved one or whatever. And it may be--
20 I'm not even sure that is going to happen here, but if that
21 happens, are you going to believe the person because they are
22 more emotional about it? Is that something that is going to
23 happen?

24 Is there anybody that feels they have a problem
25 judging testimony because of any level of emotion displayed
26 by the witness? Okay, I appreciate it.

27 From time to time and this is a case which, of
28 course, is coming to you from another county. And it's a
29 distance from the place where a number of the people live,

1 but you know, depending upon the people's ability to get here
2 and stuff, from time to time there may be a number of people
3 attending the trial. Do you understand what I'm saying? And
4 these people, you will have some people come in and sit down,
5 and they will be the relatives or friends and supporters of
6 the Defendant, and you will have people come in here because
7 they are concerned about what happened to the people who died
8 in this case. Do you understand what I'm saying?

9 Now these are not people -- they are sitting in the
10 audience, so they are people who are not involved in the
11 case. So they don't know what happened. They may have
12 different feelings; they may have heard things and all that
13 kind of stuff, but they don't know anything to help you
14 decide this case. Do you understand what I'm saying?

15 So we are not, so no one is going to be influenced
16 by who has the most number of people on their side and who
17 could afford the most to get down here; right? Okay. Does
18 anybody have any problem with that?

19 And the case is whoever is selected on the jury,
20 it's their case to decide and not the case of anybody else
21 who may be attending the trial including us up here. Does
22 everyone agree with that?

23 (Pause while Defense Counsel confer.)

24 BY MR. LUMUMBA: Did everybody notice that in
25 their questionnaire there was a part in there right at the
26 end, and it asked questions about if anyone had any kind of
27 biases that would affect them, religious bias or anything.
28 Did everyone see that? And even though your questionnaire
29 was out of order, did you still see that question? Okay, and

1 that is my, that is the last question. Are there any kind of
2 biases that anybody feels even, you know, like we have been
3 up here asking you questions, and if you are mad at me for
4 asking you more questions than the other guy did, let me know
5 now, all right? I mean, you know, and that kind of thing.
6 Is there anybody that has any of that kind of problem that
7 would disturb them? And there is no racial bias. I mean
8 this is a case unfortunately where the victim here who has
9 died is a gentleman who is white, okay, and the person who is
10 on trial here is a gentleman who is not white. He is what we
11 call nowadays an African-American. Does everyone understand
12 that?

13 So is there anybody here who has any kind of views
14 that is going to make you lean one way or the other, either
15 towards the Defendant or towards the victim or towards the
16 prosecution --I want to correct myself-- in this case?

17 And let me tell you why I corrected myself. See,
18 this is a question too because see, the victim unfortunately
19 is not here. Do we understand that? So the assumption of
20 the prosecution in bringing a case is that they are
21 prosecuting someone, and we say that they are prosecuting.
22 We submit he is not the person. You understand that? The
23 victim has not said that this person did anything to him.
24 You understand? So even though the tragic situation comes
25 because of the victim, we cannot assume that anyone is
26 speaking for the victim here. We can only listen to the
27 testimony that comes from the people who either saw or
28 didn't see things and try to figure out what the situation is
29 here.

1 Is everyone prepared to do that; right? And you
2 know, one of the things that you do in evaluating his
3 credibility, I think the Judge is going to ask you that you
4 weigh credibility and weigh testimony and evidence, and then
5 at some point you try to make a decision if there is a
6 conflict in the testimony; right? If there is a conflict in
7 the testimony, one person says one thing and one person says
8 the other one thing.

9 How many of you have children? (Most of the jurors
10 raise their hands.) Okay, all of you have got children. So
11 you are experts on testimony of credibility. I mean, you
12 know, you have got one child, and the old cookie jar example
13 comes in. The cookie jar is broke. One of them comes in and
14 say, well, I did it-- I mean I didn't do it, and the other
15 one says, you know, there is an argument.

16 So sometimes you have got to evaluate the
17 credibility to see who is telling the truth. So you listen
18 to them both. If one person comes in with cookies all over
19 their mouth, you know, you look at the physical evidence.
20 Right? Okay, you look at the physical evidence. But at some
21 time, so sometimes you can tell and you make a decision; is
22 that correct? Sometimes you can't tell; right?

23 A. (By unidentified juror) That's true.

24 Q. And if in this case-- now I'm not going to say you
25 are not going to know, but we feel quite confident and we
26 submit to you that this is a case where we feel he is not
27 guilty and shouldn't be here. But in any event, if you get
28 to that point and you don't know, does everyone know what
29 their verdict should be? What should it be? If you don't

1 know, the proper verdict is not guilty because the State has
2 the burden of proving beyond a reasonable doubt. Would that
3 be correct, Mr. -- what is your name?

4 A. (BY JUROR 3, MR. JOSEPH MOLETA) Moleta.

5 Q. Moleta. Would that be correct?

6 A. Yes, sir.

7 Q. Okay, would everybody be prepared to follow those
8 instructions if those are the instructions the Judge gives?

9 All right, now one final question. One final
10 question. Does everybody want me to stop asking questions?

11 A. (By Several Jurors) Yes.

12 BY MR. LUMUMBA: Thank you. I am going to do
13 that. The only thing I have got here now is
14 (inaudible) (Laughter.) Okay.

15 BY THE COURT: Okay, unfortunately I have got
16 just a couple. (Laughter.)

17 FURTHER VOIR DIRE EXAMINATION BY THE COURT:

18 I know y'all are glad to hear that. Y'all can
19 get mad at me. I'm going to direct this question to Mr.
20 Cooper, Ms. Connie Ladner, Mr. Seymour and Ms. Beeson. I
21 want to go back to the question that was presented to you
22 about the death penalty, and I want to cut to the chase. The
23 test is this. It's not whether or not you have strong
24 feelings one way or another. The test is that if you get to
25 the sentencing phase, would you automatically impose the
26 death penalty regardless of what the evidence was? Do any of
27 y'all feel that way?

28 A. (Response by several jurors) No.

29 Q. How about Mr. Cooper, do you feel that way? Would

1 you consider both options?

2 A. (BY JUROR 44, MR. DAVID COOPER) I mean if I was a
3 sworn juror, I would follow your instructions.

4 Q. Okay, and then you would consider both options; is
5 that correct?

6 A. Yes.

7 Q. Okay, and Ms. Ladner, how about you?

8 A. (BY JUROR 48, MS. CONNIE L. LADNER) Yes, sir. I
9 would consider all options.

10 Q. Mr. Seymour, would you?

11 A. (BY JUROR 60, MR. DONALD G. SEYMOUR) Yes, I would.

12 Q. Okay, and Ms. Beeson, would you?

13 A. (BY JUROR 73, MS. MARCIA W. BEESON) I would
14 consider all options.

15 Q. I can't hear you?

16 A. I would consider all options.

17 Q. Okay, thank you, ma'am.

18 Okay, there are five of you that we need to -- I'm
19 sorry?

20 BY MR. HORAN: We are going to have another
21 one, Your Honor. We just got a questionnaire in of
22 one of the jurors that may need some individual
23 voir dire.

24 BY MR. LUMUMBA: Which number is that?

25 BY MR. HORAN: 19.

26 BY THE COURT: Okay. I have six people that
27 we must do some individual voir dire on like we
28 have done in the past. As soon as we get through
29 with that, then this procedure will be complete,

1 and we will get to the point of selecting the
2 jury. Let me see y'all up here just a minute.

3 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
4 THE JURY AS FOLLOWS:)

5 **BY THE COURT:** How long are y'all going to
6 want to confer?

7 BY MR. LUMUMBA: Well, let me just tell you
8 what I think. Let me-- can I ask them right
9 quick?

10 (Mr. Lumumba stepped away from the bench.)

11 **BY THE COURT:** How long do y'all think y'all
12 are going to need?

13 BY MR. HORAN: 30 minutes.

14 BY MR. EVANS: At least.

15 **BY THE COURT:** Okay, well, what I'm thinking
16 about doing is releasing the jurors, all but these
17 six, for lunch now, have them back at 1:30 at the
18 time when I think we can be ready to tell them who
19 the jury is. And then we will voir dire these six
20 right now.

21 BY MR. LUMUMBA: This is what we think, okay.
22 See, we not only want to talk to each other, but
23 not knowing anything about this area, and there is
24 other attorneys here who have volunteered to offer
25 us information as to whether, you know, other, as
26 to jurors and what they know about them, okay, if
27 they know anything. Like some of them may have sat
28 in on trials and all that kind of stuff. What I
29 would like to do-- and we are about to go into the

1 lunch period, so it is going to be kind of hard to
2 talk to these folks. I would like to have at least
3 an hour, an hour and a half.

4 **BY THE COURT:** Okay, my intention is to do
5 this-- and we can do that. My intention is this:
6 To release all the jurors but these six. This
7 individual voir dire of these six is not going to
8 take but just a minute and then have them all
9 come-- well, I don't think it will. It won't take
10 but about-- how about 1:30? Have them back at
11 1:30? And they have agreed. Is that all right
12 with y'all?

13 **BY MR. LUMUMBA:** 1:30? We are not going to
14 eat?

15 **BY THE COURT:** No, you don't need nothing to
16 eat. I might eat. I'm going to make y'all work.
17 Let's try to get this jury seated. We are going to
18 have to-- after we get the jury picked, they are
19 going to have to have, we are going to have to make
20 some arrangements about them getting their
21 clothes. According to what the bailiffs have told
22 me, that is going to take a while, and I am just
23 kind of pushed for time. If y'all want something
24 to eat--

25 **BY MR. LUMUMBA:** --Well, let me ask you this.
26 So do you anticipate-- you said get them picked and
27 all that. So what will happen then as far as the
28 case?

29 **BY THE COURT:** Well, if we can get the jury

1 here with their clothes and everything in time, we
2 will take some testimony. I mean if they have all
3 got their clothes, as soon as we get them picked,
4 we will start taking some testimony.

5 BY MR. LUMUMBA: Okay.

6 BY THE COURT: I don't know that they don't
7 have them but I have been told--

8 BY MR. LUMUMBA: --Okay, well, look. Here is
9 my only problem, my only problem. I don't know
10 that that gives me the time because it if was at a
11 different time of the day--

12 BY THE COURT: All right. How about 2
13 o'clock?

14 BY MR. LUMUMBA: 2 o'clock, yeah. So you are
15 saying we are going to get these six people right
16 now?

17 BY THE COURT: Yeah. And then I'm going to
18 have them all come back at 2 o'clock.

19 BY MR. HORAN: Judge, as a matter of-- if we
20 voir dire this six and don't let them go, if they
21 are selected, they haven't eaten anything either.

22 BY THE COURT: They are going to get to go.
23 They don't have to be back until 2 o'clock.

24 BY MR. HORAN: Oh, you are going to let them
25 go and then come back at 2:00?

26 BY THE COURT: Sure. No.

27 BY MR. EVANS: We are going to voir dire them
28 and then let them go--

29 BY THE COURT: --That's what I say. I have

1 got that covered. Don't worry. That's what we are
2 going to do.

3 BY MR. HORAN: You are going to voir dire, let
4 them go, and then let them come back at 2:00.
5 Okay.

6 END BENCH CONFERENCE.

7 BY THE COURT: Let me call out these names.
8 Here is what I'm going to do. I'm going to let
9 most of you go to lunch right now. I have got six
10 of you I need to talk to before I let you go to
11 lunch, and I'm going to ask those six to stay. I'm
12 going to want, when I get through, I need everybody
13 back at 2 o'clock, and I hope at 2 o'clock we will
14 be able to tell you who is on this jury and who is
15 not. I anticipate that we will. We are going to
16 work through lunch. I'm going to let y'all go so
17 you don't have to sit around waiting on us.

18 So here is who I want to stay for just a few
19 minutes. Number 44, Mr. Cooper; number 60, Mr.
20 Seymour; number 64, Ms. Melvin; number 73, Ms.
21 Beeson; and number 50, Ms. Young, and y'all
22 indicated there was one more, Mr. Horan.

23 BY MR. HORAN: Number 19, Ms. Gray.

24 BY THE COURT: Number 19, Ms. Gray.

25 BY MR. LUMUMBA: Could we approach on one of
26 them?

27 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
28 THE JURY AS FOLLOWS:)

29 BY MR. LUMUMBA: Why are we doing Ms. Gray?

1 BY MR. HORAN: Have you read the
2 questionnaire?

3 BY MR. LUMUMBA: No, I haven't.

4 BY MR. HORAN: Well, it says she is not in
5 favor of the death penalty.

6 BY MR. LUMUMBA: Okay, I'm sorry. I didn't
7 know that. Okay, but this is another one, Judge,
8 number 17. There was something about number 17
9 that I felt should be dealt with individually.

10 BY THE COURT: We have already done her
11 individually?

12 BY MR. LUMUMBA: We did number 17
13 individually?

14 BY THE COURT: Uh-huh. Sure did.

15 BY MR. LUMUMBA: Okay. How about-- what is
16 the numbers you gave me, all you just said?

17 BY THE COURT: Okay. 44, 50, 60, 64, 73 and
18 19.

19 BY MR. FREELON: Number 17 said she heard
20 about the trial.

21 BY MR. LUMUMBA: That's what we-- you were
22 going to bring her back because she said, remember
23 I asked--

24 BY THE COURT: She did. She was individually
25 on what she knew about the trial. We did an
26 individual on her.

27 BY MR. LUMUMBA: Okay, and she said she
28 doesn't know any more; right?

29 BY MR. FREELON: I don't think that was this

1 morning.

2 BY THE COURT: Yeah, but she said yesterday
3 she knew something about it, and we did the
4 individual voir dire on her yesterday.

5 BY MR. LUMUMBA: Right. But I think that
6 since I asked them today if there was anybody else
7 that had been jogged memory, and two other people
8 raised their hand.

9 BY THE COURT: That knew something about it?

10 BY MR. LUMUMBA: Yeah, knew more about it. Is
11 that the people you just called out?

12 BY THE COURT: Yeah. That's who I have.

13 BY MR. LUMUMBA: Okay. I have 36 down here
14 and 46. I don't remember what the reason is. Let
15 me see. 36.

16 BY THE COURT: Mr. Lackey is the one.

17 BY MR. LUMUMBA: 36, Lackey, okay. My
18 position is, my position is that Lackey needs some
19 individual voir dire. He has an extreme position
20 on it.

21 BY THE COURT: I think you covered that.

22 BY MR. LUMUMBA: Okay, then the other one is,
23 who is it? Lackey is 46 or 36?

24 BY THE COURT: 36.

25 BY MR. LUMUMBA: Okay, well, 46. Who was 46?

26 BY THE COURT: 46 is Mr. Taylor. I don't have
27 him answering to anything.

28 BY MR. LUMUMBA: 46 is Mr. Taylor? He has
29 been excluded; right?

1 **BY THE COURT:** No. He is here.

2 **BY MR. FREELON:** Who believes in public
3 execution?

4 **BY MR. LUMUMBA:** That was Lackey.

5 **BY THE COURT:** That was Lackey.

6 **BY MR. FREELON:** That was number 36?

7 **BY MR. HORAN:** Taylor was kin to Mr. Sallis.

8 **BY MR. FREELON:** Number 44 is the one who said
9 he heard about the case.

10 **BY THE COURT:** He is coming.

11 **BY MR. LUMUMBA:** He is coming, okay. All
12 right.

13 **BY THE COURT:** Yeah, 44, right.

14 END BENCH CONFERENCE.

15 **BY THE COURT:** Okay, except for those people I
16 have just called off, I'm going to excuse the rest
17 of you until 2 o'clock.

18 (While the jurors were leaving the courtroom,
19 one juror approached the bench where there was the
20 following:)

21 **BY JUROR 30, MS. REBECCA J. GALLE:** My mom
22 went to a doctor's appointment yesterday, and she
23 has got like 80 to 90 percent blockage in the
24 vein. The doctor doesn't want her driving. So
25 therefore, my little girl wouldn't have a way to
26 get to school in the morning. We don't have a bus
27 that comes down our road.

28 **BY THE COURT:** Okay, what is your name,
29 ma'am?

1 BY JUROR MS. GALLE: Rebecca Galle.

2 BY THE COURT: What is your number?

3 BY JUROR MS. GALLE: Number 30.

4 BY THE COURT: Okay, let me discuss that with
5 the lawyers. Can you come back at 2:00?

6 BY JUROR MS. GALLE: Yes, sir.

7 (ALL OF JURY WAS NOW GONE EXCEPT FOR THE SIX TOLD
8 TO REMAIN.)

9 BY THE COURT: What I'm going to ask y'all to
10 do, the ones I said to stay, if y'all will step
11 out, everybody except Mr. Cooper. And I will just
12 take you first, Mr. Cooper. If you would come up
13 here.

14 (THE OTHER FIVE JURORS GO OUTSIDE THE
15 COURTROOM.)

16 INDIVIDUAL VOIR DIRE BY THE COURT: (Juror 44, Mr. David
17 Cooper.)

18 Q. Mr. Cooper, you had indicated this morning, I
19 assume after reflection and seeing more of what was going on
20 here, that you had some knowledge of this case?

21 A. When he mentioned the furniture store, it seemed
22 like I remember a news report back when it happened that
23 somebody had broke into a furniture store, seemed like
24 several employees were, seemed like they were bound in some
25 manner and killed in an execution style. I don't know if
26 that is the same case or not, but that's what I remember
27 about it.

28 Q. All right, what you learned, did you learn that
29 from the news account?

1 A. Yeah, when it happened.

2 Q. Did you--

3 A. --not recently or I haven't talked to--

4 Q. Have you ever had anybody talk to you about this
5 case at all?

6 A. No.

7 Q. After you read that opinion, did you form an
8 opinion as to the guilt or innocence of Mr. Flowers in this
9 case?

10 A. No. I didn't associate the Flowers' name with the
11 case at all.

12 Q. All right, can you set aside what you read in this
13 case, about this case and try this case on the evidence that
14 comes from the witness stand and applying the law as I give
15 you at the end of the case?

16 A. Yes.

17 Q. Okay.

18 BY THE COURT: Has the State got any
19 questions?

20 BY MR. EVANS: No, sir.

21 BY MR. LUMUMBA: Just a couple.

22 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:

23 Q. Mr. Cooper, once you read what you read, you just
24 read the newspaper; is that right?

25 A. Well, actually it was probably on like the evening
26 news on TV or something like that.

27 Q. Did you express an opinion about it to anybody when
28 you saw it?

29 A. Well, my wife and I were watching it, and we

1 thought it was kind of a horrible thing to happen.

2 Q. Okay, and did your wife express or both of you
3 thought the same thing; is that right?

4 A. Yes.

5 Q. Okay, and understandable. And at that time
6 obviously, you had no, you had no idea you would be sitting
7 here today?

8 A. No.

9 Q. And I am just asking you this. Having that occur,
10 you know, back then and now you are sitting here today with
11 Mr. Flowers who is for whatever reason charged for it, okay,
12 is there anything about this unpleasant experience and maybe
13 perhaps somewhat unfortunate experience in terms of seeing,
14 you know, on TV that you think might affect your
15 consciousness in terms of either willingly or unwillingly--
16 do you understand what I'm saying?

17 A. No.

18 Q. No, okay. Okay.

19 BY MR. LUMUMBA: I don't have any other
20 questions on that. Okay. And on the death penalty
21 thing, have we finished that or what?

22 BY THE COURT: Yes, sir. I think that was
23 sufficient. That has been into sufficiently. Mr.
24 Cooper, you can go to lunch.

25 BY JUROR MR. DAVID COOPER: Thank you.

26 BY THE COURT: Let's have Mr. Seymour.

27 (Mr. David Cooper leaves the courtroom, and
28 JUROR MR. DONALD G. SEYMOUR enters the courtroom.)

29 BY THE COURT: I am going to do the publicity

1 ones first, and then we will come back to the other
2 one.

3 Mr. Seymour, if you would, come up here, and
4 I'm going to put you on the hot seat.

5 BY JUROR MR. SEYMOUR: I thought that back
6 there was hot enough.

7 INDIVIDUAL VOIR DIRE BY THE COURT: (Juror 60, Mr. Seymour).

8 Q. Mr. Seymour, as we have gotten into this case, I
9 think it became apparent to you or you indicated it became
10 apparent to you that you did have some knowledge about this
11 case. Could you tell me what you know?

12 A. Less than what I was told by the gentleman this
13 morning, that there was an incident that happened at a
14 furniture store--

15 Q. --Did you ever know, on that information before you
16 got here, did you ever know who was charged with it or
17 anything?

18 A. No. I do recall, it may have been when I was
19 filling out the form that the question came up that a Flowers
20 or Fowler, you know. That is it.

21 Q. Did what you know about this case come out of the
22 newspaper or news media?

23 A. To be honest with you, I don't even know. I don't
24 think it was.

25 Q. Did you form any opinion as to the guilt or
26 innocence of Mr. Flowers based on what you knew about this
27 case?

28 A. No.

29 Q. Could you make your decision in this case on the

1 evidence as it comes from the witness stand and the
2 instructions of law that I give you?

3 A. I believe I can. Yes, sir.

4 Q. All right, sir.

5 BY THE COURT: Has the State got any
6 questions?

7 BY MR. EVANS: No questions, Your Honor.

8 BY MR. LUMUMBA: I have no questions.

9 BY THE COURT: Okay, Mr. Seymour. You are
10 free to go to lunch.

11 BY MR. SEYMOUR: Goodness.

12 BY THE COURT: Ms. Melvin.

13 BY MR. SEYMOUR: That seat was hotter back
14 there.

15 (Mr. Seymour left the courtroom, and JUROR 64,
16 MS. WANDA MELVIN entered the courtroom.)

17 BY THE COURT: Ms. Melvin, if you would have a
18 seat up here, please.

19 INDIVIDUAL VOIR DIRE BY THE COURT:

20 Q. Ms. Melvin, you indicated this morning that having
21 been here now over a day, that you think you might have known
22 something about this case prior to being here. Is that
23 correct?

24 A. Yes, sir.

25 Q. What is it that you know?

26 A. What I, if it's the case that I remember reading
27 about, it was a furniture store where the store was burned.
28 It was a family owned business, and it was a disgruntled
29 employee that they linked it too.

1 Q. Okay. Did you know who that was?

2 A. No, sir.

3 Q. Okay, how did you get that information?

4 A. I read it in the Sun Herald.

5 Q. Okay, so that would have been about when it
6 occurred that you read it?

7 A. It could have been; yes, sir. It had to have been.

8 Q. It has not recently, has it?

9 A. No, sir.

10 Q. Do you know anything about this case since what you
11 read?

12 A. No, sir.

13 Q. Okay, did you form any opinion as to the guilt or
14 innocence of Mr. Flowers because of what you knew about that
15 case?

16 A. Not giving a name, no, sir. No, sir.

17 Q. Have you now formed an opinion based on what you
18 have heard?

19 A. No, sir.

20 Q. Okay, can you make your decision in this case based
21 on the evidence as it comes from the witness stand and on the
22 instructions of law that I give you?

23 A. Yes, sir.

24 Q. Okay.

25 BY THE COURT: The State?

26 BY MR. EVANS: No questions from the State.

27 BY MR. LUMUMBA: Yes, I have a few, Judge.

28 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:

29 Q. Good afternoon again, Ms. Melvin. It is barely

1 good afternoon?

2 A. Yes.

3 Q. Okay, my understanding is that you knew something
4 about a furniture store, some people being -- was it revealed
5 to you in that news article that some people may have been
6 killed?

7 A. Right, and I do believe, if I remember correctly
8 when I read this, that one person didn't necessarily die at
9 the scene. He may have died a little later.

10 Q. He may have died what?

11 A. A little later.

12 Q. Okay, and do you recall from the news article-- you
13 said it was about-- when was it, if you remember?

14 A. I couldn't put a time on it.

15 Q. Did you discuss it with someone when you read it?

16 A. No. Not that I remember.

17 Q. Anybody discuss it with you?

18 A. Not that I remember.

19 Q. I noticed when the Judge asked you a question about
20 forming an opinion, your response was that you didn't form an
21 opinion linked to any, to Mr. Flowers?

22 A. Right.

23 Q. Okay, what kind of opinion did you form that was
24 not linked to Mr. Flowers?

25 A. Um, I didn't really form an opinion. I could
26 visualize it happening with an employer, former employee
27 being upset and going in and doing it. I could visualize
28 that happening.

29 Q. Okay, and by the way, when you were forming

1 whatever opinion you were forming, of course, you had no idea
2 you would be here?

3 A. Right. Exactly.

4 Q. So there was certainly nothing wrong with you doing
5 it, but the question I really had was now, you know, now the
6 question in this case is not whether or not Mr. Flowers is a
7 former employee. Okay, the question in this case is whether
8 or not Mr. Flowers had anything to do with this event. Do
9 you understand what I'm saying?

10 A. Correct.

11 Q. So now say that in the course of the proof, it came
12 up undisputed that Mr. Flowers is a former employee. Do you
13 understand what I'm saying?

14 A. Yes, sir.

15 Q. Okay, and that's all; right?

16 A. Right.

17 Q. I mean, you know, it may very well be disputed
18 whether he was a disgruntled employee. Do you see what I'm
19 saying?

20 A. Yes, sir.

21 Q. So do you think that the opinion that you formed
22 back then, and this is just an honest question. Do you think
23 that your opinion that you formed about you could see how an
24 employee would do that and all that kind of stuff, would that
25 in any way bias you and, you know, like kind of like
26 influence your view coming into the trial?

27 A. It could.

28 Q. It could?

29 A. It could.

1 Q. And of course, it's a view formed long before you
2 had any reason to know you could be here?

3 A. Right.

4 Q. And do you feel that because of that, you may be a
5 little less than comfortable sitting in a case like this?

6 A. I would.

7 Q. Okay. You feel it would be difficult for you to
8 just throw that aside completely?

9 A. I think it might. It might. I couldn't honestly
10 say that it would or it wouldn't, but there is a doubt.

11 Q. There is a doubt there?

12 A. There is a doubt.

13 Q. And that is a doubt, a doubt as to whether you
14 could perform under those circumstances given the background
15 and the situation?

16 A. Right.

17 Q. Okay, and given the experience that you had which
18 you had no reason to believe would bring you here; right?

19 A. Right.

20 BY MR. LUMUMBA: Okay. I thank you very
21 much.

22 BY THE COURT: Ms. Melvin. You can go. Why
23 don't you wait just right outside just for a few
24 minutes.

25 (Juror 64, Ms. Wanda G. Melvin, leaves the
26 courtroom.)

27 BY THE COURT: In light of that answer, I'm
28 going to excuse her for cause. Any objection to
29 that?

1 BY MR. LUMUMBA: I don't have any objection,
2 Judge.

3 BY MR. EVANS: No.

4 BY THE COURT: You can tell Ms. Melvin --
5 well, let Ms. Melvin come back in here just a
6 second.

7 (Juror Ms. Wanda Melvin reenters the
8 courtroom.)

9 BY THE COURT: You can come up here.

10 BY MS. MELVIN: Thank you.

11 BY THE COURT: In light of your feelings on
12 that which are very honest and I appreciate that,
13 I'm going to excuse you, and you are excused from
14 this jury. But I appreciate very much your
15 willingness to be here and help us in picking this
16 jury.

17 BY MS. MELVIN: Thank you.

18 BY THE COURT: You should check with the
19 Clerk's Office though before you go. You don't
20 have to be back at 2 o'clock. You can go right
21 across the hall and check with Ms. Parker. She
22 said she wanted to check with any jurors that were
23 excused. It had something to do with maybe a form
24 or getting you paid.

25 BY MS. MELVIN: Thank you, sir.

26 BY THE COURT: Okay, I will take Ms. Beeson
27 now.

28 (JUROR NUMBER 73, MS. MARCIA W. BEESON, enters
29 the courtroom.)

1 **BY THE COURT:** Ms. Beeson, you can come up
2 here, please ma'am.

3 INDIVIDUAL VOIR DIRE BY THE COURT:

4 Q. Ms. Beeson, you had indicated this morning that you
5 had some prior knowledge of this case. Could you tell me
6 what you know?

7 A. I didn't realize that I had known anything until
8 the attorney stated the facts, and then I realized that in
9 the back of my mind I had read something about it years ago,
10 but that's all I remember.

11 Q. Do you even remember who was charged--

12 A. No.

13 Q. --before you got here?

14 A. No.

15 Q. How did you get that information?

16 A. I guess I read it in the newspaper. I really don't
17 remember. I just remember hearing about it, and I didn't
18 remember until you said something today.

19 Q. Did you form any opinions based on what you read at
20 that time?

21 A. No.

22 Q. Did you especially form any opinions as to the
23 guilt or innocence of Mr. Flowers?

24 A. No, sir.

25 Q. If you were selected on this case, could you set
26 what you know aside and decide this case on the evidence that
27 comes from the witness stand and the instructions on the law
28 that I give you?

29 A. Yes, sir.

1 Q. Okay. All I know is what I heard this morning.

2 BY THE COURT: Okay.

3 BY MR. EVANS: No questions, Your Honor.

4 BY MR. LUMUMBA: Yeah, just a couple of
5 questions.

6 INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:

7 Q. Good afternoon, Ms. Beeson, again. Okay, you
8 probably read it in the newspaper or saw it on TV or
9 something?

10 A. I don't remember where I heard it. In fact, until
11 I heard you say something this morning, I didn't realize that
12 I knew.

13 Q. Right, and let me just say that. You understand,
14 of course, the reason we ask questions like that is because
15 we don't want you to get in the middle of trial and say, oh,
16 I heard something about it and start going according to what
17 you heard as opposed to what is coming to you on the stand.
18 Can you appreciate that?

19 A. Yes, sir.

20 Q. So your consciousness having been perked a little
21 bit, do you know whether or not you had any discussions with
22 anybody about it, the case, you know, expressing your opinion
23 or them expressing their opinion?

24 A. I don't recall any discussions whatsoever.

25 Q. Okay. Having heard whatever you heard, did you
26 form any opinions at all?

27 A. No, sir.

28 Q. You didn't? Okay. And what, can you recall what
29 you heard now? Can you recall what you heard?

1 A. Just what you said this morning is all I recall. I
2 mean just a flash that I had read something or seen it on
3 TV. I don't even remember where I heard it.

4 Q. Well, I know I said something this morning, but can
5 you tell me in your own words what you do recall?

6 A. Just that there had been a robbery and some people
7 had been murdered. That's it.

8 Q. So now you know that that is the newspaper; right?

9 A. Either the newspaper or TV. I don't know which
10 one.

11 Q. But whatever it was, it was news media?

12 A. Right. It was media.

13 Q. Okay, so in this case there has been no proof that
14 even a robbery occurred?

15	A. Correct.
----	-------------

16 Q. And that is not to say that we, that we have a
17 position on that at all. But there has been no proof, and
18 the prosecution does have to prove whatever he is charged.
19 Do you think that that kind of media publicity, saying that
20 there was a robbery, is something which would bias you or
21 prejudice you if the Judge put you to question that you have
22 to decide, you know, from these facts that there was a
23 robbery or there wasn't a robbery. Do you think that having
24 heard that in the newspaper, you would already be somewhat
25 inclined to decide that there was--

26	A. --No, sir.
----	---------------

27 Q. Okay. That wouldn't affect you in any way?

28 | A. No, sir.

29 BY MR. LUMUMBA: Okay, I have no further

1 questions.

2 **BY THE COURT:** Thank you, Ms. Beeson. I will
3 see you at 2 o'clock. Okay. Anita Young.

4 (Juror Ms. Beeson left the courtroom, and
5 JUROR 50, MS. ANITA YOUNG, entered the courtroom.)

6 **BY MR. LUMUMBA:** Ms. Young is 50?

7 **BY THE COURT:** Yes. Ms. Young, if you would
8 have a seat up here.

9 (Ms. Young takes the witness stand.)

10 **BY THE COURT:** Mr. Lumumba, you are the one
11 that wanted to voir dire her, so I will let you go
12 first.

13 **BY MR. LUMUMBA:** Okay.

14 **INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:** (Juror 50, Ms. Young).

15 Q. Good afternoon, Ms. Young. How are you doing?
16 Okay, good afternoon. Okay, this is what we asked you about
17 before. We want to ask you again. Now you know that in this
18 case, and you have had some experiences which, where people
19 involved in domestic violence. Is that basically it?

20 A. Right.

21 Q. Now you know that here there is no charge or basic
22 charge of domestic violence or anything like that as far as
23 Mr. Flowers is concerned? Is that-- you understand that;
24 right?

25 A. I understand.

26 Q. But there is still a concern, and we just want to
27 ask you about it. Now as far as Mr. Flowers is concerned, he
28 is here, has pled not guilty, and he has been charged with
29 some offenses. You understand that; right?

1 A. Uh-hum. Yes.

2 Q. And the offenses are some which have to do with
3 some people that the charge is that somebody dealt, you know,
4 I have to make it clearly, but somebody committed capital
5 murder, that they killed some people at a furniture store in
6 Tardy. That's the charge; right? Do you see what I'm
7 saying?

8 A. Right.

9 Q. And there is a whole set of proofs. We have, you
10 know, we certainly intend to interview witnesses as they get
11 to the stand. Do you understand what I'm saying?

12 A. Uh-hum.

13 Q. And we have a feeling that at the end of the trial
14 people will agree with us; right? Do you see what I'm
15 saying?

16 A. (Juror Ms. Young nods her head.)

17 Q. That Mr. Flowers is not guilty; right?

18 A. (Juror Ms. Young nods her head.)

19 Q. However, the problem, what I wanted to inquire in
20 you in, is there anything about your background, the problem
21 you had that would cause you to feel he is guilty just
22 because of the problem that you had?

23 A. No, I wouldn't think he was guilty because of the
24 problems that I have had, but I have, I have a problem with
25 crimes that are committed against women.

26 Q. I see. I see. I see.

27 A. Women are the weaker sex.

28 Q. Right.

29 A. I have a problem with that.

1 Q. And I can appreciate that. I can appreciate that.
2 And it's not, it is nothing wrong with you having that
3 position. In fact, I think a lot of people do, don't they?

4 A. (Juror Ms. Young nods her head.)

5 Q. Maybe not enough. Maybe not enough, but there are
6 some people who have that problem; is that correct?

7 A. Right.

8 Q. Okay, what the law is asking you - and I am just
9 trying to find out because you need to tell us - is that
10 having that problem with crime against women, okay, if there
11 is a situation that occurred, the question here is not
12 whether or not somebody should be severely judged because
13 they committed a crime against a woman. The question here is
14 whether he actually committed a crime against anybody. Do
15 you understand what I'm saying?

16 A. Right.

17 Q. So that being the question and anybody that is
18 involved really in this particular case, there is only one
19 person, which is the charge involves a guy named, a young
20 man, you know, you will find out, a young man named Stewart.
21 Do you understand what I'm saying? That he died in this
22 incident, okay? But in the same incident some other people
23 died, you know. So the question is not so much whether
24 anybody should commit a crime against a woman, but the
25 question in this case is going to be whether or not Mr.
26 Flowers did any of it? Do you see what I'm saying?

27 A. I understand.

28 Q. Okay, in that situation, can you be fair and can
29 you be impartial, and can you sit and judge the evidence and

1 make that determination; right?

2 A. (Pause) I would rather not.

3 Q. Okay. You are not sure you can?

4 A. Right.

5 Q. Okay. And so and you have problems which may
6 interfere with your ability to be fair and impartial in the
7 case?

8 A. Right.

9 BY MR. LUMUMBA: I don't have any other
10 questions.

11 BY THE COURT: Any questions from the State?

12 BY MR. EVANS: No, sir.

13 BY THE COURT: Ms. Young, if you would stand
14 outside for just a second.

15 (Juror Mr. Young leaves the courtroom.)

16 BY THE COURT: In light of that answer, I'm
17 going to excuse her for cause.

18 BY MR. EVANS: And that is juror number 50?

19 BY MR. LUMUMBA: I have no objection.

20 BY THE COURT: That is number 50. Tell Ms.
21 Young to come back just a second, and I'm going to
22 let her go.

23 (Juror 50, Ms. Anita Young, reenters the
24 courtroom.)

25 BY THE COURT: That's okay; you can come up
26 here, Ms. Young. In light of your response to that
27 last question, which I think was a fair response
28 and exactly the way I want folks to answer the
29 question, but in light of your answer to that, I'm

1 going to excuse you and tell you how much I
2 appreciate you helping us go through this process.
3 I hope your tooth is better.

4 BY JUROR MS. YOUNG: Thank you.

5 BY THE COURT: You are free to go. You don't
6 have to come back.

7 BY THE COURT: Okay. That leaves number 19,
8 Ms. Gail?

9 BY MR. HORAN: Ms. Gray.

10 BY THE COURT: Ms. Gray.

11 (JUROR 19, MS. GANIA K. GRAY, enters the
12 courtroom.)

13 BY THE COURT: Would you come around up here,
14 please, ma'am.

15 BY MR. HORAN: May I proceed, Your Honor?

16 INDIVIDUAL VOIR DIRE BY MR. HORAN:

17 Q. Ms. Gray, how are you doing?

18 A. I am all right.

19 Q. I noticed on your questionnaire that you indicated
20 on the death penalty that you stated that you believe they
21 should be punished, but not to death. "I would go for life
22 without parole." Do you still feel that way, Ms. Gray?

23 A. What has been explained to me then, it all goes on
24 the majority, don't it? You know, like if I sit on a jury
25 and I don't just say go for the majority, don't the majority
26 wins out?

27 Q. No, ma'am. You would have to -- before the death
28 penalty could be imposed, assuming we get to that particular
29 stage, the Judge is going to give you an instruction. The

1 first part of that instruction tells you certain factors that
2 you have to find before you consider the death penalty;
3 okay? And then after the jury unanimously-- every one of you
4 have to find that those exist before you can-- it's not a
5 majority.

6 A. And you don't have to be the same ones.

7 Q. That's right.

8 A. Okay, I understand.

9 Q. Now after that, then you consider what is, like Mr.
10 Lumumba and Mr. Evans discussed with you, whether or not
11 there are certain aggravating factors, those things, those
12 things in the Defendant's history or things in the case that
13 tend to support the death penalty; okay?

14 A. All right.

15 Q. Then you consider those things, and you consider
16 the mitigating factors, those things that they would put
17 before you that they say tend to support the other option;
18 that would be life without parole. All right, then you weigh
19 those two, those two, the aggravating factors and the
20 mitigating factors. And then the jury has to unanimously
21 find beyond a reasonable doubt that the mitigating factors do
22 not outweigh the aggravating factors. Would you do that?

23 A. Yes, I can do that.

24 Q. Would you not automatically vote for life without
25 parole like you said on your questionnaire?

26 A. No, I said--

27 Q. --Has your view changed?

28 A. I said I believe that, but that wouldn't be what I
29 would vote for.

1 Q. Okay, you are saying you could set that aside?

2 A. Yeah.

3 Q. And if the facts warranted it and the law
4 authorized it?

5 A. Right.

6 Q. And the circumstances were that you thought it was
7 justified, you could impose the death penalty?

8 A. Yes, I could.

9 BY MR. HORAN: Thank you, Ms. Gray.

10 BY THE COURT: Do you have any questions?

11 BY MR. LUMUMBA: No, sir.

12 BY THE COURT: Okay. Thank you, Ms. Gray.

13 You may go to lunch. I will see you at 2 o'clock.

14 BY JUROR MS. GRAY: All right, thank you.

15 (Juror Ms. Gray leaves the courtroom.)

16 BY THE COURT: Okay, let me tell y'all two
17 things that I think we need to consider before we
18 break right now. Mr. Warden has got the flu, and I
19 can question him again about it, but I don't think
20 that somebody that has got the flu and that kind of
21 sick and taking medicine is to the point where they
22 can try a case that is going to take a week. What
23 do y'all think?

24 BY MR. FREELON: Ain't no way.

25 BY MR. EVANS: I would like for the Court to
26 talk to him again and see how he is feeling because
27 as short as we are on jurors, I wouldn't want to
28 agree to him being struck if he said he felt like
29 sitting it out.

1 **BY THE COURT:** Well, I will ask him that, if
2 he feels like-- if he feels like he can do it, I
3 will allow him to do it. But if he tells me he
4 can't, I'm not going to do it. He told me this
5 morning he didn't think he could.

6 **BY MR. LUMUMBA:** Okay, let me just say this,
7 Judge. I probably-- you know, my view is that
8 actually if you noticed, that when I was talking
9 about Mr. Warden and the lady that said she knew
10 him.

11 **BY THE COURT:** I know. He didn't even hear
12 her talking.

13 **BY MR. LUMUMBA:** Well, he had stone gone to
14 sleep. He was out; he was out cold, and he woke up
15 and then he responded.

16 **BY THE COURT:** Well, I understand the
17 situation.

18 **BY MR. LUMUMBA:** Okay.

19 **BY THE COURT:** The other one is I have a lady
20 named Rebecca Galle.

21 **BY MR. FREELON:** What number?

22 **BY THE COURT:** She is number 30. She came up
23 to me just a minute ago while I was at the bench
24 and said she thought she would have somebody to
25 take care of her child. Her mother was going to do
26 that, but her mother has been determined to have 80
27 percent of carotid artery blocked by a doctor
28 yesterday, and she has got nobody to keep that
29 child. So I'm in all likelihood going to have to

1 release her.

2 BY MR. LUMUMBA: If that is the circumstance,
3 I have no objection.

4 BY THE COURT: Well, that's what she told me.
5 I have got no reason to think otherwise.

6 BY MR. LUMUMBA: Right. I have no objection.

7 BY THE COURT: All right, gentlemen.

8 BY MR. HORAN: What time you want us back?

9 BY MR. LUMUMBA: So Rebecca is excluded. She
10 is excused?

11 BY THE COURT: I'm going to excuse her, yeah.

12 BY MR. EVANS: We have got until 2 o'clock?

13 BY THE COURT: Well, the jury is coming back
14 at 2:00. If y'all can beat that, it would help.
15 I don't know. When can y'all be ready?

16 BY MR. EVANS: If we go eat anything, it will
17 take at least that long.

18 BY THE COURT: I haven't said anything about
19 y'all eating.

20 BY MR. HORAN: We are going to eat.

21 BY THE COURT: Order out.

22 BY MR. LUMUMBA: Judge, hold it. Judge, let
23 me be honest with you. I never eat so--

24 BY THE COURT: I know; I can tell. You see
25 that I do.

26 BY MR. LUMUMBA: No, no. But--

27 BY THE COURT: Do you want this on the
28 record?

29 BY MR. LUMUMBA: It doesn't have to be on the

1 record. You know, we are just talking.

2 (PROCEEDINGS BEFORE LUNCH ON MARCH 23, 1999,
3 WERE CONCLUDED. FOLLOWING THE NOON RECESS, DEFENSE
4 COUNSEL REQUESTED MORE TIME AT 2 O'CLOCK, SO
5 SHORTLY AFTER 2:00 THE COURT WENT INTO OPEN COURT
6 WITH THE JURY PANEL PRESENT BUT WITHOUT ANY
7 ATTORNEYS OR THE DEFENDANT PRESENT FOR THE
8 FOLLOWING:)

9 **BY THE COURT:** Some of the lawyers have had
10 questions that they have a few more minutes to
11 consult with themselves, and then they have got to
12 get with me. So that's what we are going to be
13 doing. We are going to be taking a little bit of
14 time to do that, and it should be just very
15 shortly, ten or fifteen minutes, and then they will
16 get with me, and we will be picking the jury. I
17 just wanted to come back and let you know what the
18 situation was. You don't have to stay in your seat
19 pending that time. If you want to, you can go to
20 the jury room, or you can go out in the hall. And
21 just make sure the bailiffs can find you when we
22 need to get you back in here, and we will call you
23 in here and see who got picked and who didn't.

24 (FOLLOWING ANOTHER RECESS, COURT WAS AGAIN
25 CALLED TO ORDER WITH THE JURY PANEL, ALL COUNSEL,
26 AND THE DEFENDANT PRESENT:)

27 **BY THE COURT:** Mr. Warden, could I see you?

28 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
29 THE JURY AND WITH COUNSEL NOT PRESENT AS FOLLOWS:)

1 **BY THE COURT:** You don't look like you feel
2 any better?

3 BY JUROR 11, MR. WINSTON O. WARDEN: I don't.

4 **BY THE COURT:** Are you worse?

5 BY JUROR MR. WARDEN: Well, I don't know about
6 worse. I don't feel no better.

7 **BY THE COURT:** Okay, do you think you are
8 physically unable to do this?

9 BY JUROR MR. WARDEN: Yes, sir. The way I
10 feel right now.

11 **BY THE COURT:** Okay.

12 Gentlemen, y'all want to come up here?

13 BY MR. EVANS: No, sir.

14 **BY THE COURT:** Okay.

15 (MR. LUMUMBA APPROACHES THE BENCH.)

16 BY MR. LUMUMBA: Pardon?

17 **BY THE COURT:** Mr. Warden tells me he doesn't
18 think he is physically able to participate. Mr.
19 Warden, I'm going to excuse you, and I hope you
20 feel better.

21 BY JUROR MR. WARDEN: I tell you what; I
22 don't know if I could feel any better if I just
23 rolled over and died.

24 **BY THE COURT:** Don't do that.

25 BY MR. WARDEN: Y'all need this?

26 **BY THE COURT:** No. You need to go check with
27 the Clerk's Office.

28 BY MR. WARDEN: Down the hall?

29 **BY THE COURT:** Right across the hall.

1 (Mr. Warden was excused and left the
2 courtroom. JUROR 30, MS. REBECCA J. GALLE
3 approached the bench.)

4 **BY THE COURT:** You gentlemen want to be up
5 here on this?

6 BY MR. EVANS: No, sir, don't need to be.

7 (CONFERENCE AT THE BENCH WITH ONLY THE COURT
8 AND JUROR MS. GALLE PRESENT:)

9 **BY THE COURT:** Ms. Galle, I am going to excuse
10 you because of that situation.

11 BY MS. GALLE: Can I go now?

12 **BY THE COURT:** Huh?

13 BY MS. GALLE: Do I have to go down or do I
14 wait or?

15 **BY THE COURT:** No, you can go across the hall
16 and check with the Clerk. They want to see you
17 before you go.

18 BY MS. GALLE: Okay.

19 **BY THE COURT:** Thank you.

20 BY MR. LUMUMBA: What was your number?

21 BY MS. GALLE: 30.

22 **END BENCH CONFERENCE.**

23 **BY THE COURT:** Now y'all are going to be tired
24 of me saying this, but most of you are about to
25 get, not have to fool with me any more. I have got
26 to ask those of you remaining jurors, if you will,
27 I need for you to leave the courtroom, and we are
28 going to go ahead proceed to picking this jury.
29 But I need y'all to you step out while we are doing

1 that.

2 BY MR. LUMUMBA: Judge, wait one second. I'm
3 sorry.

4 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
5 THE JURY AS FOLLOWS:)

6 BY MR. LUMUMBA: Juror number 6, who is one of
7 the questionnaires that I got kind of late, in her
8 answer on the race and bias issue, she said that
9 she tolerates interracial marriages, but she does
10 not approve of them. That is kind of something I
11 would like to individually voir dire her on.

12 BY THE COURT: Well, you have already done
13 them. You have already asked them about their
14 biases, and that does not indicate that she is
15 racially biased. The fact is it would indicate
16 otherwise to me, and you have already asked them
17 that question in voir dire. So we are not going to
18 individually voir dire.

19 END BENCH CONFERENCE.

20 BY THE COURT: Now y'all can go out.

21 JURY LEAVES THE COURTROOM.

22 BY THE COURT: Has the State got any further
23 for cause?

24 BY MR. EVANS: One second, Your Honor.

25 (Pause) Your Honor, the only other one that I think
26 we need to raise for cause at this point is juror
27 number 18. I think you have already heard all the
28 reasons. I just bring that juror back to your
29 attention.

1 **BY THE COURT:** She is the one that said, she
2 is the journalist. Do you remember, Mr. Lumumba?
3 You remember what her response was?

4 **BY MR. LUMUMBA:** Mr. 18?

5 **BY THE COURT:** Ms. 18.

6 **BY MR. LUMUMBA:** He challenged her for cause?

7 **BY THE COURT:** Yes.

8 **BY MR. LUMUMBA:** I don't have an objection to
9 that.

10 **BY THE COURT:** Okay.

11 **BY THE COURT:** Any further from the State?

12 **BY MR. EVANS:** Not for cause, Your Honor.
13 That's all for cause.

14 **BY THE COURT:** Okay. The Defendant?

15 **BY MR. LUMUMBA:** Okay, we would challenge
16 juror number, here again we challenge juror number
17 6 for cause. I just want to put into the record
18 the statement on the juror's questionnaire. The
19 juror indicated that - I think it was juror number
20 6. Betty Ladner. "I tolerate interracial marriages
21 and homosexuality, but I do not condone it." That
22 would suggest to me a point of view which doesn't
23 necessarily have to be on the jury. So in fact, it
24 suggests to me some kind of racism that one would
25 tolerate interracial marriages but not condone
26 them. So I would suggest that she should be
27 excluded for cause.

28 **BY THE COURT:** That is overruled.

29 **BY MR. LUMUMBA:** Okay. I'm going to challenge

1 for cause Mr., Ms. Pell. Pell is number 25. She
2 basically said the same thing Ms. Weiss said, and
3 that is she would tend to give more credit to a
4 police officer's testimony. And although she did
5 repeat the magic words, I think that she really had
6 never really relented on that position that she
7 would tend to give more favor to a police officer's
8 testimony. She is, I think, a child of a police
9 officer if I remember correctly.

10 **BY THE COURT:** Her father was a police
11 officer.

12 BY MR. LUMUMBA: Right, and she indicated she
13 had a bias for police officers.

14 BY MR. EVANS: And the proper question was
15 asked to her. She said that she would listen to
16 the evidence and weigh her opinion on the
17 evidence.

18 **BY THE COURT:** She said she would follow the
19 instructions on the law, so I'm not going to excuse
20 her for cause.

21 BY MR. LUMUMBA: We would challenge Stephanie
22 Lee for cause. Ms. Lee knows court personnel, and
23 I don't think it is necessary under our present
24 circumstances that we have anybody with those
25 kinds of relationships on the jury. We have got
26 plenty of jurors, so I would challenge Ms. Lee for
27 cause.

28 **BY THE COURT:** Other than-- her only response
29 that I know of was she said she knew of them. She

1 didn't indicate any bias whatsoever because of
2 that, and I won't excuse her for cause.

3 BY MR. LUMUMBA: We are challenging,
4 challenging Mr. Houston for cause. Mr. Houston is
5 not one who responded when we asked him on oral
6 voir dire those who had the eye to eye view, eye
7 for an eye view to the death penalty, that they
8 automatically thought that the death penalty should
9 be given. But in his questionnaire he straight out
10 said, "I feel very strongly that an eye for an
11 eye," and he quotes that. So that is the reason I
12 would challenge Mr. Houston.

13 BY THE COURT: That might be subject to a
14 peremptory challenge, but it's not for cause. It
15 is overruled.

16 BY MR. LUMUMBA: We would challenge Mr., juror
17 number 35 - we have problems pronouncing his name -
18 for cause. I would note two things. Number one is
19 that we have someone who saw him talking in the
20 hall about the case. What they were able to hear -
21 and they would be willing to present this - is him
22 saying that he was in here dealing with a case that
23 had to do with four homicides. Is that basically
24 what he said? And that four counts of homicide and
25 that he was hoping that he would get on the jury.
26 Other discussion took place, but I'm not sure the
27 person who heard it, overheard it heard the rest of
28 that discussion.

29 So my first thing would be just to give him a

1 challenge for the cause, and if the Court would
2 reject that, because I think that is good enough to
3 exclude him since he is not supposed to be talking
4 about the case, but if that is not enough, then I
5 would ask that he be subjected to further voir
6 dire.

7 BY MR. EVANS: That is not--

8 BY THE COURT: --That is not before the Court.
9 Whatever he did is not before the Court at this
10 time, so I can't do it for cause. I will reserve
11 my ruling on the extra voir dire when we get
12 through. Let's go ahead.

13 BY MR. LUMUMBA: Okay, in terms of-- okay. We
14 would also--

15 BY THE COURT: --I am saying I will come back
16 to that.

17 BY MR. LUMUMBA: Come back to that. I would
18 challenge Mr. Lackey for cause. I think his views
19 on the death penalty were just too extreme - public
20 executions and everything else. I don't think
21 there is any way he could be objective in this kind
22 of a case, and I would challenge him for cause.

23 BY THE COURT: That is overruled.

24 BY MR. LUMUMBA: We challenge David Cooper for
25 cause because of the analogy of the case as well as
26 because of his views on the death penalty where at
27 least once he indicated he would automatically tend
28 to give the death penalty.

29 BY THE COURT: No, I never did hear him say

1 that. The question was put, the way the question
2 was put to him he said he was strongly in favor,
3 but he never said that he would automatically
4 impose it, and he specifically did not say that on
5 the individual voir dire. So that, the objection
6 is overruled.

7 BY MR. LUMUMBA: Connie Ladner, the eye for an
8 eye and tooth for a tooth view was also expressed,
9 and I would challenge her for cause.

10 BY THE COURT: She was very definite that she
11 would be a fair and impartial juror. So therefore,
12 that objection is overruled.

13 BY MR. LUMUMBA: We would challenge for cause
14 Mr. Donald Seymour for the same reasons as relates
15 to his view on the death penalty. And we would
16 challenge for cause Marcia Beeson.

17 BY THE COURT: I'm sorry?

18 BY MR. LUMUMBA: First of all, the first one
19 is Mr. Seymour--

20 BY THE COURT: --The first one is Mr. Seymour?

21 BY MR. LUMUMBA: Yeah, Mr. Seymour.

22 BY THE COURT: Mr. Seymour, once to your
23 question and then second when he was individually
24 voir dired, said that he would follow the law, and
25 he would consider both options in this case.
26 Therefore, he is not challengeable for cause. And
27 the other one you had was Ms. Beeson?

28 BY MR. LUMUMBA: Yeah.

29 BY THE COURT: She stated and she stated very

1 clearly that she would follow the law and consider
2 both options. Therefore, she is not challengeable
3 for cause. In relation to that-- that was all of
4 them that you had for cause; is that right?

5 BY MR. LUMUMBA: Uh-hum.

6 BY THE COURT: I think, and this is going to
7 be very short what we are going to do, but I need
8 Mr. Echavarria in here to see if there is any
9 substance to the fact that he has talked about this
10 case.

11 (JUROR NUMBER 35, MR. ANDRES ECHAVARRIA enters
12 the courtroom.)

13 BY THE COURT: Mr. Echavarria, if you would,
14 have a seat right up there, please.

15 BY MR. ECHAVARRIA: Right up there?

16 BY THE COURT: Right up here.

17 BY MR. ECHAVARRIA: Oh, okay.

18 INDIVIDUAL VOIR DIRE BY THE COURT:

19 Q. Mr. Echavarria, have you had any conversations
20 about this case at all with anybody?

21 A. No, sir.

22 Q. Has anybody talked to you about it at all?

23 A. No, sir.

24 Q. Okay, have you made any comments as to whether or
25 not you wanted to be on this jury or not?

26 A. I may have been joking around with some friends out
27 there.

28 Q. All right, what is it exactly that you said? It's
29 okay. I mean I have just got to know.

1 A. Well, one of two things. I would like for this
2 ordeal to end, either be on the jury or go home.

3 Q. I appreciate that. Was there anything else in your
4 conversation?

5 A. No.

6 Q. So what exactly did you say?

7 A. I would like to either be on the jury or go home.

8 Q. Okay.

9 **BY THE COURT:** Either one of y'all got any
10 questions for Mr. Echavarria?

11 **BY MR. EVANS:** The State doesn't.

12 **BY MR. LUMUMBA:** I just have one, Mr.
13 Echavarria.

14 **INDIVIDUAL VOIR DIRE BY MR. LUMUMBA:**

15 Q. Did you mention to the person that this was a case
16 involving four homicides or something and four counts?

17 A. No, sir. I didn't mention any details of this case
18 to anybody.

19 Q. Okay. And you were near the-- when you made that
20 statement at one point, were you in the hall?

21 A. Oh, we were downstairs.

22 Q. Downstairs. Going in and out of a door or
23 something like that? Where were you at downstairs?

24 A. Smoking out in the front.

25 Q. Out in the front, okay. So did you make any
26 statements in the hall, either going into the rest room or
27 coming out of the rest room?

28 A. About the case?

29 Q. Right.

1 A. No, sir.

2 Q. You know, basically to the nature that you have
3 already indicated. The kind of statements that you have said
4 that you made about you wanted to be on the jury or off the
5 jury?

6 A. That was outside downstairs.

7 Q. You didn't say anything like that inside?

8 A. No, sir.

9 Q. And you never said anything about four, about four
10 homicides, four victims of people who were supposed to have
11 been-- four counts of homicide. You didn't say that to
12 anybody?

13 A. No, sir.

14 BY MR. LUMUMBA: All right. I have no further
15 questions.

16 BY MR. LUMUMBA:

17 Q. But you were, you have been in the hall and down at
18 different times; is that correct?

19 A. Yes, sir.

20 BY MR. LUMUMBA: Okay, I have no further
21 questions.

22 BY THE COURT: I have got one more question for
23 you.

24 FURTHER INDIVIDUAL VOIR DIRE BY THE COURT:

25 Q. Is there anything about this matter or anything at
26 all that would keep you from being a fair and impartial juror
27 where you could give each side a fair and impartial jury--
28 trial based on the evidence from that witness stand and the
29 law that I give you? Can you do that?

1 A. Yes, sir.

2 **BY THE COURT:** You can go out.

3 BY MR. LUMUMBA: Thank you.

4 (Juror 35, Mr. Andres Echavarria leaves the
5 courtroom.)

6 BY MR. LUMUMBA: For the record Judge, I would
7 like to call Cora Flowers and let her just put on
8 the record what she heard because it wasn't
9 something I heard. I think it is important for the
10 record. I mean of course, you know, depending upon
11 what she says, the Court may or may not decide to
12 believe the potential juror. But I would ask to
13 call Cora Hall just to put on the record what she
14 heard-- Cora Flowers, I'm sorry.

15 **BY THE COURT:** Okay, I'm going to let her
16 testify for that limited purpose only and no other.

17 BY MR. LUMUMBA: Oh, no. Ms. Flowers.

18 **BY THE COURT:** Raise your right hand, please,
19 ma'am.

20 **CORA FLOWERS,**
21 a black female called by the Defendant concerning her
22 observations of a prospective juror, having first been duly
23 sworn by the Court, testified as follows, to-wit:

24 **BY THE COURT:** Have a seat up there. State
25 your name for the record.

26 BY THE WITNESS: Cora Flowers.

27 DIRECT EXAMINATION BY MR. LUMUMBA:

28 Q. Okay, Ms. Flowers, have you been present in the
29 building during the course of jury selection in this case?

1 A. Yes, sitting out in the hallway.

2 Q. Okay. Did you see the gentleman who was just up
3 here on the stand?

4 A. Yes.

5 Q. Had you seen him at any point in time making any
6 comments in the hall?

7 A. Yes, when I was going to the bathroom.

8 Q. Just explain it all to the Judge, okay, whatever
9 you saw?

10 A. Okay. When I was going to the bathroom, he was
11 coming out. And it was a man he was talking to with a light
12 blue T-- shirt, excuse me. He told the man that he wanted
13 to be on this case because it was-- well, I heard the end
14 part, I guess, because he ran back in afterwards. He said it
15 was a four count murder that Curtis was charged, but he
16 didn't say his name. He just said somebody four counts -- I
17 am so nervous. Excuse me.

18 BY THE COURT: It is all right. Take your
19 time.

20 BY THE WITNESS:

21 A. Okay. He said the person was charged with four
22 counts of murder and that he would like to be on the case,
23 and that's all I heard.

24 Q. Where was he at?

25 A. At the bathroom.

26 Q. Up here on this floor?

27 A. Uh-huh, at the rest room right down on the end.

28 Q. Was there more conversation that you could not
29 hear?

1 A. Well, that's all I heard because I was going in the
2 ladies' room.

3 Q. You were going in the ladies' room.

4 A. Uh-hum.

5 Q. I'm not asking you what, if you heard -- I know you
6 didn't hear anything else. You didn't know what, if
7 anything, else was said.

8 A. No.

9 Q. I am saying could you hear whether there were words
10 being spoken other than you didn't hear or you don't know
11 whether that was the only thing that was said?

12 A. No. That's all I heard.

13 BY MR. LUMUMBA: Okay. I have no further
14 questions.

15 BY THE COURT: Thank you, ma'am. Y'all have
16 any questions?

17 BY MR. EVANS: No questions.

18 WITNESS STEPS DOWN.

19 BY THE COURT: Okay, wanting to be on the case
20 doesn't disqualify you. It is unusual, but it
21 doesn't disqualify you. So I'm going to overrule
22 that for cause.

23 BY MR. LUMUMBA: Just for the record, Judge,
24 that is not the reason I'm making it. I am making
25 it because he talked about the case. He talked
26 about a four count indictment--

27 BY MR. EVANS: --That is not talking about the
28 case.

29 BY THE COURT: Wait a minute. You can't talk

1 at the same time.

2 BY MR. LUMUMBA: He talked about a four count
3 indictment or four count charge against the
4 person. That is talking about the case.

5 BY THE COURT: Well, I mean, yeah, but that
6 was stuff that y'all all told him. I mean he is
7 not talking about it from his own personal
8 knowledge other than what y'all told him. Okay.
9 Y'all ready?

10 BY MR. EVANS: Yes, sir.

11 BY MR. LUMUMBA: Can we get five minutes,
12 Judge? Five minutes.

13 BY THE COURT: Well, it has only been one
14 excused for cause. It ought not to change much on
15 what y'all have done.

16 BY MR. LUMUMBA: Well, it might change a
17 little. Give us 5 minutes.

18 BY THE COURT: Okay.

19 (FOLLOWING A BRIEF RECESS, PROCEEDINGS
20 CONTINUED IN THE COURTROOM WITH ALL THE JURY PANEL
21 OUT BUT WITH ALL COUNSEL AND THE DEFENDANT
22 PRESENT:)

23 BY THE COURT: Ready? Wait just a second.
24 Has anybody got an extra jury list? If you don't,
25 that is okay.

26 (The Clerk hands a list to the Court.)

27 BY THE COURT: Okay.

28 BY MR. EVANS: The State will tender juror
29 number 3. Your Honor, my list is so marked up; if

1 I pass by any, if you will, let me know.

2 **BY THE COURT:** Okay.

3 BY MR. EVANS: Juror number 5 will be S-1.

4 BY MR. EVANS: The State will tender number
5 6. State will tender number 8. State will tender
6 number 9. Number 10 will be S-2. Number 12 will
7 be S-3.

8 **BY THE COURT:** Wait-- that's right. Mr.
9 Warden is gone. Number 12 will be S-3? Is that
10 what you said?

11 BY MR. EVANS: Yes, sir. We tender number
12 13. Tender number 15. Tender number 16. Tender
13 number 17. 18 will be S-4.

14 **BY THE COURT:** Well, she has been excused for
15 cause.

16 BY MR. EVANS: Oh, that's right. Saved me a
17 strike. 19 will be S-4. Tender number 20. Tender
18 number 21. Tender number 25. Tender number 26.
19 I have got twelve.

20 **BY THE COURT:** (Pause) I have got fourteen.
21 What am I doing wrong?

22 BY MR. EVANS: Do you want me to run back
23 through them?

24 **BY THE COURT:** Yeah.

25 BY MR. EVANS: Tender 3, tender--

26 **BY THE COURT:** --Hold on. Hold on. Okay, 3.

27 BY MR. EVANS: 6, tendered 8, tendered 9,
28 tendered 13, tendered 15, tendered 16, tendered 17,
29 tendered 20, tendered 21, tendered 25, and tendered

1 26.

2 **BY THE COURT:** Okay, hold on just a second.
3 Okay, what do you say to number 3?

4 BY MR. LUMUMBA: Okay, Judge, is that twelve?

5 **BY THE COURT:** Yes, sir.

6 BY MR. LUMUMBA: That is twelve, okay. We
7 would accept number 3. No, wait a minute; first of
8 all, before we do anything, we make a Batson
9 challenge. The State has excluded every black
10 juror that it has come upon. They excluded juror
11 number, Linda Yarbrough, juror number 5. That was
12 their first challenge. They excluded juror number
13 12 which was Shirley Lott, the second challenge.

14 BY MR. HORAN: No, incorrect.

15 BY MR. EVANS: The second challenges was S-2,
16 number 10 which is a white juror.

17 BY MR. LUMUMBA: Yeah, but--

18 **BY THE COURT:** S-3 was Ms. Lott.

19 BY MR. LUMUMBA: S-3 was Ms. Lott. Okay, and
20 of course, they excluded Ms. Cook, but just for the
21 record--

22 **BY THE COURT:** S-4 was Ms. Gray.

23 BY MR. LUMUMBA: Okay, then S-4 they got rid
24 of which was a black juror. So that is three, all
25 three, I mean three challenges out of the four were
26 used on blacks, and those are the only three blacks
27 that they were confronted with at that time. So
28 that is my Batson challenge.

29 **BY THE COURT:** Okay, I hold that that

1 establishes a prima facie case.

2 BY MR. EVANS: All right, Your Honor, as far
3 as juror number 5, who is S-1, I think the Court
4 will remember that she had very strong feelings
5 toward the death penalty. She had them both in her
6 questionnaire, and she had them in the courtroom
7 during voir dire.

8 BY THE COURT: Okay. In relation to Ms.
9 Yarbrough, I think that is valid and a race neutral
10 reason, and therefore, I sustain that peremptory.

11 BY MR. EVANS: Juror number 10, which is S-2,
12 even though this was a white juror, and I state
13 this for the purpose of showing that we are
14 striking both white and black jurors for the same
15 reason. Juror number 10 has a son that was
16 convicted of a robbery and served time for it. We
17 struck her for that reason.

18 Juror number 12, who is a black juror, was
19 S-3. We struck her for two reasons. One is that
20 she has two brothers that committed burglaries, and
21 both served time for them. Not only was this
22 family members, but this was very close family
23 members. Also, her comments in her questionnaire
24 about the death penalty is that she thought the
25 death penalty was only appropriate when there were
26 children involved.

27 BY MR. LUMUMBA: That is an untrue statement
28 about her comment.

29 BY THE COURT: Okay, wait a minute. Let me, I

1 want to go back because in relation to Ms.
2 Yarbrough, do you have any rebuttal to what he said
3 about Ms. Yarbrough? I ruled before I gave you
4 that chance.

5 BY MR. LUMUMBA: Yeah. I think Ms. Yarbrough
6 was fully rehabilitated when she got on the stand
7 here. Nobody really had to rehabilitate her. She
8 on her own pointed out very clearly that she could
9 give the death penalty and her-- actually her form
10 was the one where she expressed no opinion on the
11 death penalty, and once the law was explained to
12 her, she was in total compliance with the law. She
13 apparently was under the impression during the voir
14 dire which was put to her initially that she didn't
15 have a choice. And whenever, and she kept asking,
16 You mean you have a choice? You have a choice.
17 You know, in other words, understanding that there
18 was a choice and she also pointed out that it was
19 very difficult for her to make that kind of
20 decision without any facts before her. I do not
21 think that any reservations she expressed to the
22 death penalty were sufficient to justify a
23 challenge once one understands that she clarified
24 it very well on the stand and was very strong on
25 it. So that is my reasons why I oppose that
26 challenge.

27 BY THE COURT: Of course, I agree with you,
28 Mr. Lumumba. You did rehabilitate her, and that is
29 the reason she was not excused for cause. But on a

1 peremptory, the showing must be whether it was race
2 neutral, and that would be a reason that it would
3 be race neutral. And therefore, I sustain that
4 challenge.

5 Now he has stated his reasons for Ms. Lott.
6 Do you have any rebuttal to that? I guess you do
7 because you just told me you did.

8 BY MR. LUMUMBA: Yes.

9 BY MR. HORAN: Are you saying that is not the
10 questionnaire that you have?

11 BY MR. EVANS: Your Honor, I have the
12 questionnaire--

13 BY MR. LUMUMBA: --No, I--

14 BY THE COURT: --Let him state his side of it,
15 and then we will get to your side--

16 BY MR. HORAN: --I wanted to make sure he had
17 the questionnaire--

18 BY MR. LUMUMBA: --There is no statement in
19 this questionnaire where the only reason that she
20 would give the death penalty is because of, because
21 of a child being killed. It says, "I think the
22 death penalty should be used only in violent
23 crimes," and then she goes on to state an example.
24 "For example, rape and murder of a child." If I
25 understand my English language since first grade,
26 when you give an example, that is not an exhaustive
27 reasoning as to why you think a death penalty
28 should be given. She said that she felt that in
29 violent crimes and she didn't put any limitations

1 on that. She just put an example, so that--

2 **BY THE COURT:** --May I see that?

3 BY MR. LUMUMBA: Yes.

4 (Questionnaire handed to the Court.)

5 BY MR. LUMUMBA: And I would also point out
6 that they passed over certain white persons who had
7 a lot more reservations about giving the death
8 penalty than that, and I can point those out if you
9 like.

10 (Pause while the Court reads.)

11 BY MR. LUMUMBA: I do have, Judge, I would
12 just like to add to this. A juror who they left
13 on, number 3, in different words said just about
14 the same thing. "I believe it depends on the
15 crime, the individual committing the crime, and the
16 severity of the crime, the past record of the
17 individual committing the crime." That was Mr.
18 Moleta. Juror number, I think it is juror number
19 6, Ms. Ladner, she says, "The position I hold it
20 would depend on the person, what the person was
21 guilty of." She is a person who generally favors--
22 you have my questionnaire. I don't know what--
23 what did--

24 **BY THE COURT:** Here, you can have it back.

25 BY MR. LUMUMBA: Okay, would you get that,
26 please.

27 (Questionnaire was handed back to Mr.
28 Lumumba.)

29 BY MR. LUMUMBA: So that was, those are

1 responses and much different than-- then the other
2 responses go on and on. Another juror who they
3 accepted says, "Depends on the circumstances of the
4 situation." That is Rebecca Anderson, and in fact,
5 Ms. Sherry Lott circled "Generally support." She
6 supports, she said she generally supported. Ms.
7 Rebecca Anderson, who I believe they left on --
8 that is juror number 9 if I am not mistaken. Her
9 name is also O'Neal, I think. Probably one of them
10 is a married name. She states no opinion on the
11 death penalty; right? And they left her on. Then
12 she says also it depends on the situation, and that
13 is what she said in her comments on it.

14 Number 11 was gone, so that wasn't a juror
15 where we had any chance of doing anything with.
16 And they left, didn't they leave Ms. Young on the
17 jury?

18 **BY THE COURT:** Yes, sir.

19 **BY MR. LUMUMBA:** Ms. Young is number 13. Ms.
20 Young says - she is a white woman - "I do not
21 believe that society has the right to impose the
22 death penalty. I believe only God has the right to
23 impose the death penalty. I could not impose the
24 death penalty."

25 **BY MR. HORAN:** We may want to challenge her.

26 **BY MR. EVANS:** We may need to go back--

27 **BY MR. LUMUMBA:** --Hold it, excuse me, excuse
28 me. Too late for that. Ms. Young, it is
29 interesting that--

1 **BY THE COURT:** --Let me shorten what you are
2 saying.

3 BY MR. LUMUMBA: Ms. Young is number 5.

4 **BY THE COURT:** Let me shorten what you are
5 saying, Mr. Lumumba. I sustain your objection.

6 BY MR. LUMUMBA: All right, thank you.

7 BY MR. EVANS: Your Honor?

8 **BY THE COURT:** Yes, sir.

9 BY MR. EVANS: You are saying you sustain his
10 objection to a peremptory challenge on that juror--

11 **BY THE COURT:** --That's exactly what I said,
12 Mr. Evans--

13 BY MR. EVANS: --that has two convicted
14 brothers in the penitentiary?

15 **BY THE COURT:** No.

16 BY MR. LUMUMBA: No, that's not--

17 **BY THE COURT:** On Ms. Lott, you objected to
18 her on the basis of--

19 BY MR. EVANS: --No, sir. No, sir. No, sir.
20 I did not. I objected to her on two reasons. One
21 is that she has two brothers that are in the
22 penitentiary for burglary that is close relatives,
23 and the other reason was that, was her opinions on
24 the death penalty.

25 **BY THE COURT:** Okay, as far as her opinions on
26 the death penalty, I would sustain it to that. As
27 far as her having two brothers in the penitentiary,
28 that has been accepted by the Court--

29 BY MR. LUMUMBA: --Well, Judge, let me point

1 out here though.

2 BY THE COURT: Unless you can point out to me
3 that is incorrect.

4 BY MR. LUMUMBA: Well, what I am pointing out
5 is that number 17, somebody they accepted, it is
6 pointed out that they, I would point out that she
7 had a brother convicted of manslaughter-- a cousin
8 convicted of manslaughter and who is in jail.

9 BY MR. EVANS: That is not near as close a
10 relative.

11 BY MR. LUMUMBA: Well, we don't know that, and
12 you didn't ask--

13 BY MR. EVANS: --And I don't have enough
14 strikes.

15 BY MR. LUMUMBA: And neither one of them said
16 anything that would-- and then there is number 18.
17 Number 18 is gone? Oh, Ms. Weiss is gone. But 17
18 indicated that she had someone serving time also,
19 Judge. So I don't think that that is consistent
20 reason, and I would, I would say that that is not a
21 strike that should be upheld. That is Sherry Lott
22 that I am speaking of.

23 BY MR. EVANS: Your Honor, in response if I
24 understand what Ms. Finch said, this was a relative
25 that she only saw very infrequently. On Sherry
26 Lott, we are talking about two brothers. It's the
27 same situation as Ms. Cook, number 10, who was
28 white. She had a son; that is a very close
29 relationship, and I'm not going to agree ever to

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 leave somebody on a jury that has that close of
2 family members that are in the penitentiary.

3 **BY THE COURT:** On that basis the objection to
4 the strike is overruled.

5 **BY MR. LUMUMBA:** Well, I also raise the
6 objection to number 19, Judge.

7 **BY THE COURT:** Ms. Gray?

8 **BY MR. LUMUMBA:** Yes.

9 **BY MR. EVANS:** Your Honor, number 19 we have
10 misdemeanor convictions on her. We also have the
11 fact that she made the comment she does not think
12 people should be put to death, and she also put in
13 her questionnaire that she has panic attacks. And
14 I do not want somebody sitting on a jury that may
15 be suffering panic attacks. So there is three
16 separate reasons on her.

17 **BY MR. LUMUMBA:** Uh.

18 **BY THE COURT:** Let me say this. Ms. Gray came
19 to the bench and told me about the panic attacks
20 thing at the qualification period when she was
21 qualifying. You may have been up here when she
22 said that Mr. Lumumba. She did say it. I left her
23 on. She did make that aware to the Court.

24 **BY MR. LUMUMBA:** Okay, I wasn't at the bench.
25 I didn't hear that, Judge, but if she said it, I
26 don't take, I don't have any reason to take issue
27 with that. I don't think I was actually there when
28 she said it. But there are several jurors who have
29 indicated that they are under some kind of

1 psychological counseling for various different
2 reasons. And I would indicate to the Court that I
3 don't think that is a sufficient reason to exclude
4 her. There was no questions put to her by the
5 State to inquire into her health of whether that
6 would interfere with her. And you have a person
7 here, Betty Earl Ladner-- by the way.

8 BY MR. HORAN: What number, please?

9 BY MR. LUMUMBA: Number 6. She has indicated
10 that somebody is under treatment. This may not be
11 her. It might be her son is under treatment for a
12 drug problem. If I'm not mistaken, Ms. Ladner may
13 have said that same son had a problem with some
14 kind of conviction, and she is still on the jury.

15 BY THE COURT: Okay, I have some experience
16 with panic disorders. My uncle suffered from them,
17 and when you get them, you are not functional and
18 it would, and that is for valid reason not to have
19 somebody on the jury. She wouldn't be functional
20 for either one of you if she had one.

21 Now having done that, let's go back. Let's
22 start back with number 3. I think that got them
23 all.

24 BY MR. LUMUMBA: Start back with number 3?

25 BY THE COURT: Yeah, as to whether y'all
26 accept number 3 or not.

27 BY MR. LUMUMBA: We accept number 3.

28 BY THE COURT: Okay. How about number 6?

29 BY MR. LUMUMBA: We accept number 6 only

1 because we have no other choice really, to be
2 honest with you, given the makeup of the jury.

3 **BY THE COURT:** Okay, how about number 8?

4 **BY MR. LUMUMBA:** We would challenge number 8.

5 **BY THE COURT:** All right, number 8 is D-1.

6 How about number 9?

7 **BY MR. LUMUMBA:** Number 9, we would accept.

8 **BY THE COURT:** 13?

9 **BY MR. LUMUMBA:** Number 13, we would accept.

10 **BY THE COURT:** 15?

11 (Pause while Defense Counsel confer.)

12 **BY MR. LUMUMBA:** Which number are we on,
13 Judge?

14 **BY THE COURT:** 15, Mr. Overstreet.

15 **BY MR. LUMUMBA:** We would challenge Mr.
16 Overstreet.

17 **BY THE COURT:** Okay, he is D-2. What do you
18 say to number 16, Mr. Dobson?

19 **BY MR. LUMUMBA:** We have no challenge on Mr.
20 Dobson.

21 **BY THE COURT:** Okay. Number 17, Ms. Finch.

22 **BY MR. LUMUMBA:** We are challenging Ms.
23 Finch.

24 **BY THE COURT:** Okay. That would be D-3.
25 Number 20, Ms. Ballman?

26 **BY MR. LUMUMBA:** We have no challenge to Ms.
27 Ballman.

28 **BY THE COURT:** Number 21, Ms. Partridge?

29 **BY MR. LUMUMBA:** We have no challenge to Ms.

1 Partridge. And Judge, just to interrupt you just
2 for a second, just for the record I also want to
3 point out that Mr. Dobson is someone else that we
4 have taken because we don't feel we have much
5 choice here, but go ahead.

6 **BY THE COURT:** Okay.

7 BY MR. LUMUMBA: I just wanted to put that on
8 the record. Go ahead.

9 **BY THE COURT:** All right. Number 25, Ms.
10 Pell?

11 BY MR. LUMUMBA: And Ms. Pell is definitely
12 someone we are taking because we don't feel we have
13 another choice. We are not challenging Ms. Pell.

14 **BY THE COURT:** You are not? Is that correct?

15 BY MR. LUMUMBA: No, we are not.

16 **BY THE COURT:** Number 26, Ms. Lee?

17 BY MR. LUMUMBA: We are also not challenging
18 Ms. Lee for the same reason.

19 **BY THE COURT:** Okay, I need three more.

20 BY MR. EVANS: Yes, sir.

21 BY MR. LUMUMBA: Three from the State?

22 BY MR. EVANS: Juror number 27 will be S-5.
23 Your Honor, do you want to do, go ahead since we
24 are at this point and do the Batson reasons as we
25 do the strikes?

26 **BY THE COURT:** No, I want you to tender me.
27 Go ahead and tender me and let's see what we have
28 got.

29 BY MR. EVANS: Juror number 28 will be S-6.

1 Tender 32, tender 33--

2 BY THE COURT: --Wait a minute. Hold up.

3 (Pause) 32 and what?

4 BY MR. EVANS: Tender 32, 33, and 34. I think
5 I have got to give you three, haven't I?

6 BY THE COURT: Yes. Okay. My position is he
7 has raised the Batson. Now you need to go back to
8 Mr. Cole.

9 BY MR. EVANS: Juror number 27, Mr. Cole, who
10 is S-5, we are striking for really three different
11 reasons, Your Honor. The first which I think is by
12 itself a very important reason is the fact that he
13 was on the wrong jury. There is a particular case
14 -- is this the right one? Thorne v. State that
15 basically states that the jury must come from folks
16 that are summonsed and in attendance. He was not
17 summonsed for this cause.

18 BY THE COURT: Wasn't he summonsed for the
19 venire?

20 BY MR. EVANS: No, sir, not for this venire.
21 He was--

22 BY THE COURT: --Well, they are using jurors
23 from this venire in the other Circuit Court case
24 down the hall. So it's not a special venire.

25 BY MR. EVANS: Well, it was a special jury
26 that was drawn for this case.

27 BY THE COURT: It was 350 names drawn from the
28 pool. It was not a special venire. No motion was
29 ever made for a special venire.

1 BY MR. EVANS: That is one reason. The second
2 reason was he acted like he was sleeping during
3 part of the voir dire, and according to members of
4 the District Attorney's Office here he is a gang
5 member being a member of the BGD gang.

6 BY MR. LUMUMBA: I would ask -- I am sorry.
7 Is that all of it?

8 BY MR. EVANS: That information the District
9 Attorney's Office here furnished us from
10 confidential informant that keeps them informed as
11 to who gang members are in this area.

12 BY MR. LUMUMBA: Okay. I would challenge him
13 on those reasons. I think they are all pretexts,
14 Judge, and I would ask on the last reason given
15 about the gang member. I also had an opportunity
16 to talk about this juror to an attorney, two
17 attorneys in this community. One is by the name of
18 Hudson, who knew him well, said he was an okay
19 young man, felt he would make a good juror, had no
20 indications that there was anything of bad
21 character about him. He has never been convicted
22 of a crime apparently, or else he wouldn't be up
23 here.

24 The other one was attorney Mr. Conway, Warren
25 Conway, who is the President of the Magnolia Bar
26 Association, well known in the community. He said
27 the same thing. If they have some proof that he is
28 a member of a gang, I would ask for a hearing. I
29 think we have to stop at this point. They have to

1 bring in some proof on it, give us a chance to
2 cross-examine it, and see if it's valid
3 information. I think it is pretext. I mean there
4 is nothing, there is no indication in his record,
5 criminal record or anything else that any of those
6 things are true.

7 **BY THE COURT:** Could I see that case that you
8 have got?

9 BY MR. EVANS: Yes, sir.

10 (Pause while the Court reads.)

11 **BY THE COURT:** I need to find out. Let me get
12 the Clerk in here. Let me find out whether he was
13 served period.

14 (Pause while the Court conferred with a deputy
15 clerk who then left the courtroom.)

16 **BY THE COURT:** I am waiting on the Clerk. If
17 he just wandered in off the street, I think he is
18 probably here.

19 BY MR. HORAN: I think he was summonsed.

20 BY MR. LUMUMBA: Can I make one other--

21 **BY THE COURT:** I know you think that, but
22 I'm--

23 BY MR. HORAN: --What I mean is they told me he
24 just reported to the wrong courtroom.

25 BY MR. LUMUMBA: Can I just make this comment,
26 Judge? This also is part of our argument. If they
27 never made a motion to exclude him prior to now, I
28 know they inquired to the Court, but they never
29 made a motion to exclude him. If they were

1 interested in excluding him for reasons other than
2 being black, they should have made it previously.
3 And I think they waived the opportunity to exclude
4 him for that reason at that time. So that's my
5 position.

6 **BY THE COURT:** But like I say, if he has never
7 been summonsed, he can't serve.

8 BY MR. LUMUMBA: Oh, no.

9 BY MR. EVANS: And Your Honor, we are not
10 asking for cause. We are asking for a peremptory.

11 BY MR. LUMUMBA: Can I use a stapler?

12 BY MR. EVANS: I think it's a major
13 difference.

14 BY MR. HORAN: Your Honor, I would like for
15 the record to reflect that I did represent to the
16 Court at the bench at least on two occasions I was
17 concerned whether or not he could properly sit on
18 this case.

19 BY MR. EVANS: Our concern is if he is not
20 attentive enough to show up in the right courtroom,
21 we don't want him serving on the jury.

22 BY MR. LUMUMBA: I think that is not a valid
23 reason to be excused. I think that he is black.
24 See, one of the things we have got here--

25 **BY THE COURT:** --Y'all are wasting your time
26 arguing to me right now. I'm going to wait until I
27 see what happens when she comes back.

28 BY MR. LUMUMBA: Right. They have excluded
29 every black person we have.

1 (After a pause, the deputy clerk returned to
2 the courtroom and whispered something to the
3 Court.)

4 **BY THE COURT:** He was not served for any
5 venire?

6 BY THE DEPUTY CLERK: Not for yours.

7 **BY THE COURT:** No, I know that. Has he been
8 served for any venire that is here today?

9 BY THE DEPUTY CLERK: I will have to check.

10 **BY THE COURT:** Here is the information they
11 give me. We know he was not served for this one,
12 that he came to the wrong courtroom. My question
13 is did he have a summons to be here for any other
14 jury? In other words, did he walk in off the
15 street, or did he have somebody tell him to be
16 here?

17 BY THE DEPUTY CLERK: Okay. I will make
18 sure.

19 (The deputy clerk left the courtroom again,
20 and upon her return, there was the following:)

21 BY DEPUTY CLERK: He was a County Court juror
22 for this week.

23 **BY THE COURT:** Thank you, ma'am.

24 BY MR. EVANS: Wasn't it Circuit Court?

25 **BY THE COURT:** County Court. Wait a minute.
26 Let me get her back real quick.

27 (Deputy clerk re-enters the courtroom.)

28 **BY THE COURT:** Do they co-mingle the pools?

29 BY THE DEPUTY CLERK: Sir?

1 **BY THE COURT:** In other words, if he was
2 summonsed to County Court and let's say Circuit
3 Court needed extra jurors. Do they co-mingle
4 sometimes where they--

5 **BY THE DEPUTY CLERK:** --I have never heard of
6 it, but I can ask.

7 **BY THE COURT:** Can you find out for me?

8 **BY THE DEPUTY CLERK:** Yes, sir.

9 (The Deputy Clerk left the courtroom briefly
10 and then returned.)

11 **BY THE DEPUTY CLERK:** County Court has used
12 our jurors and we have used theirs.

13 **BY THE COURT:** So they have co-mingled them?

14 **BY THE DEPUTY CLERK:** Yes.

15 **BY THE COURT:** Okay.

16 (The Deputy Clerk leaves the courtroom again.)

17 **BY THE COURT:** Let me ask you this, Mr.
18 Lumumba. Do you have any objection since that
19 juror was summonsed for County Court? The Clerk's
20 Office tells me that they co-mingle those panels
21 from time to time. If County Court needs some
22 Circuit Court jurors, they take them or vice
23 versa. So he would have been available for any, if
24 there are four trials going on here, he would have
25 been available for any one of them. Now he
26 happened to appear at this one by mistake when he
27 was actually summonsed for County Court. He has
28 gone through all the voir dire, all the
29 qualifications, and he has made it thus far. Do

1 you have any objection to his sitting on the
2 panel?

3 BY MR. LUMUMBA: None.

4 BY THE COURT: Okay, now.

5 BY MR. EVANS: Your Honor, let me bring one
6 thing to the Court's attention. As you saw, the
7 investigator for the District Attorney's Office
8 came in and spoke with Mr. Bleck a few minutes
9 ago. He had-- and that investigator's name is
10 James Render. He was the one that had told Mr.
11 Bleck that he was a BGD. He has further checked
12 and found out who his mother is and said he is not
13 a BGD member or is not the one he thought at
14 least. So the reasons we are sticking on at this
15 point is the fact that he appeared on the wrong
16 jury.

17 My reasoning for that is two. One is that he
18 was not attentive enough to show up in the right
19 courtroom, and I think this Court is going to be
20 making reversible error that I want to avoid.
21 There is no sense in having any possible reasons
22 for reversal in it, and I will use one of my
23 strikes to keep it from being that. Also, the
24 fact which follows up on him not being attentive is
25 the fact that he slept through part of the voir
26 dire.

27 BY MR. LUMUMBA: That is absolutely untrue,
28 the last statement. That is absolutely untrue. I
29 was looking at that portion of the courtroom during

1 my entire -- he never slept. He never slept. He
2 was very attentive. As far as that, we absolutely
3 waive any objection to him, and we make no
4 objection and waive any irregularity as it relates
5 to which jury he showed up on, if he showed up for
6 the wrong jury, and I would have to take whatever
7 the Court's representation on that is. But I also
8 highlight the fact, as the Court just found out,
9 that apparently people sit in the same room or
10 something like that, and they co-mingle juries and
11 sometimes they use ones from others. They use the
12 same jurors.

13 **BY THE COURT:** Well, to give you an example,
14 there were three of the jurors that were summonsed
15 for this case that didn't show up until today. I
16 don't know who they are. I haven't seen them. It
17 was just reported to me, and the Clerk's Office
18 sent them down to one of the other Circuit Judges
19 to serve on that panel down there. Let me make
20 this note for the record. There was no motion for
21 a special venire in this case. There was no order
22 granting a special venire. There were 350 jurors,
23 additional jurors called for the pool. This is a
24 term of court in Harrison County, and there were
25 350 extra jurors called for the purpose of having
26 enough jurors for this case, but there has been no
27 special venire. And had we run out here, I think I
28 can go down and get some from the other panel from
29 Judge Terry.

1 So if that is reversible error after Mr.
2 Lumumba has waived it and after what I have put in
3 the record, it will just have to be reversible
4 error. I don't think it is, and I do not think the
5 Thorne case applies.

6 BY MR. EVANS: Your Honor, is the Court ruling
7 that that is not a race neutral reason, that he was
8 inattentive, that he was seen my Mr. Horan nodding
9 off several times back there?

10 BY THE COURT: No, because I watched him and
11 he answered questions during voir dire, and I did
12 not notice that he did that, and I am ruling that
13 you cannot strike him.

14 BY MR. EVANS: Well, you will probably be
15 reversed on it.

16 BY THE COURT: Well, it won't be the first
17 time.

18 BY MR. EVANS: No, but I hate to waste a
19 trial.

20 BY THE COURT: Well, that is enough, Mr.
21 Evans. That tenders 27.

22 BY MR. EVANS: Juror number 28, Eugene
23 Crockett, Jr., has a stepson that is serving time
24 at this time. He also is the juror that on voir
25 dire told the Court yesterday morning that he
26 needed to go because he was the only one that could
27 take care of his dog. He has other things that are
28 getting his attention, and also his comments that
29 he made about the death penalty.

1 **BY THE COURT:** Rebuttal to that?

2 BY MR. LUMUMBA: I still suspect that given
3 the fact that everybody they have challenged has
4 been black, I still suspect that that is not
5 legitimate reason and is basically a pretext, and
6 that would be my argument, Judge. And in support
7 of my argument, I would also like to, on him and
8 all the other black jurors who they have either
9 struck or attempted to strike, I would like to make
10 sure that in the record we have their, what you
11 call it, questionnaires. I would like to make them
12 exhibits for purposes of this.

13 **BY THE COURT:** Okay, will you gather them up
14 and put them in there?

15 BY MR. LUMUMBA: Yeah, that is not a problem.

16 **BY THE COURT:** Ms. Burchfield -- you want
17 them as exhibits?

18 BY MR. LUMUMBA: Yeah, as exhibits.

19 (QUESTIONNAIRES OF THE BLACK JURORS WERE LATER
20 GIVEN TO THE COURT REPORTER BY MR. LUMUMBA AND WERE
21 MARKED COLLECTIVELY IN EVIDENCE AS DEFENDANT'S
22 EXHIBIT "A" TO THE MOTION DURING JURY SELECTION BUT
23 NOT TO GO TO THE JURY.)

24 BY MR. LUMUMBA: And I was just saying his,
25 for instance, he says Eugene Crockett, Jr., "Do not
26 know all the facts on the death penalty." That was
27 what he said. I am not denying that when he got,
28 when he was asked a question out here, that he
29 expressed some reservations, very carefully, but he

1 did express some reservations. Then when he got on
2 the stand-- well, no, he never got on the stand.
3 What he did, what he did was he ultimately said he
4 came to grips with it. He said that if it was the
5 responsibility of a citizen to consider it, I will
6 consider it. And I think that's all we can ask of
7 him.

8 **BY THE COURT:** I think though that the reasons
9 that he gave are legitimate reasons on a peremptory
10 challenge, and therefore, I will sustain what is
11 now S-5 to Mr. Crockett.

12 BY MR. LUMUMBA: That is now S-5?

13 **BY THE COURT:** Yes, sir. Okay, 27 and 32 and
14 33 are tendered to you. I assume you take 27?

15 BY MR. LUMUMBA: I will take 27.

16 **BY THE COURT:** How about 32?

17 BY MR. LUMUMBA: 32, I would challenge, would
18 be D, would be a challenge. That is D-4, I
19 believe.

20 **BY THE COURT:** Okay, how about 33?

21 BY MR. LUMUMBA: You know I just challenged
22 32?

23 **BY THE COURT:** Right. I just struck him off.

24 BY MR. LUMUMBA: Okay, I'm sorry. I thought
25 you -- 33 would also be a challenge.

26 **BY THE COURT:** Okay.

27 BY MR. LUMUMBA: As D-5.

28 **BY THE COURT:** I think I need two more.

29 BY MR. EVANS: 34 is already tendered.

1 **BY THE COURT:** Okay, he has tendered 34. And
2 what about 35? You have got to have two more.

3 **BY MR. EVANS:** He hasn't taken that one yet
4 though.

5 **BY THE COURT:** Well, he doesn't have to until
6 you tender twelve.

7 **BY MR. EVANS:** Well, I tendered three, and he
8 has only gone through two of them.

9 **BY THE COURT:** You tendered--

10 **BY MR. EVANS:** I tendered 32, 33 and 34.

11 **BY THE COURT:** Okay. We'll do it that way.
12 What do you say to 34?

13 **BY MR. LUMUMBA:** What do I say to 34? I would
14 challenge 34.

15 **BY THE COURT:** Hold on. Let's see how many I
16 do need now. I have got ten. I need two more.

17 **BY MR. EVANS:** Tender 35. Tender 36.

18 **BY MR. LUMUMBA:** Is it on me, Judge?

19 **BY THE COURT:** Yes, sir.

20 **BY MR. LUMUMBA:** I would challenge both of
21 those individuals.

22 **BY THE COURT:** All right, that is D-7 and
23 D-8. How about 37 and 38?

24 **BY MR. EVANS:** Tender both of them.

25 **BY MR. LUMUMBA:** And I am at D-8; is that
26 correct, Judge?

27 **BY THE COURT:** You have used eight.

28 **BY MR. EVANS:** --I tender 37 and strike number
29 38, Your Honor.

1 **BY THE COURT:** Okay. S-6; is that right?

2 BY MR. HORAN: Hold on just a minute, Judge.

3 (State's Counsel confer briefly.)

4 **BY THE COURT:** Where are we?

5 BY MR. EVANS: Right now we have tendered 37,
6 and we are trying to decide on 38. We will tender
7 38 also.

8 **BY THE COURT:** Okay, 37 and 38 are tendered.

9 BY MR. LUMUMBA: Okay, Judge, and we have--
10 our challenges have been used up to D-8; is that
11 correct?

12 **BY THE COURT:** Yes, sir.

13 BY MR. LUMUMBA: Those two we have to decide.
14 We want to look at the questionnaire of 37 one more
15 time.

16 **BY THE COURT:** Okay.

17 BY MR. LUMUMBA: We would accept both of those
18 jurors.

19 **BY THE COURT:** Okay. That is twelve then.

20 Okay, I think we need two alternates. Let's see.

21 BY MR. LUMUMBA: How many strikes do you have
22 for alternates? When you are choosing alternates,
23 how many strikes do you have?

24 **BY THE COURT:** Well, that's what I'm going to
25 look up. You are going to get one per alternate, I
26 think.

27 BY MR. LUMUMBA: How many alternates are you
28 choosing?

29 **BY THE COURT:** Huh?

1 BY MR. LUMUMBA: How many alternates are you
2 going to choose?

3 BY THE COURT: I'm going to get two.

4 BY MR. LUMUMBA: All right.

5 BY MR. HORAN: Are you ready?

6 BY THE COURT: Well, let me get to that.

7 (Pause while the Court is looking at the Rule
8 book.)

9 BY THE COURT: Okay, you get two peremptories.

10 BY MR. LUMUMBA: Okay, thank you, Judge.

11 BY MR. EVANS: That is two per alternate or
12 one per alternate?

13 BY THE COURT: "The peremptory challenges
14 shall equal the number of alternate jurors the
15 Court has ordered to be selected."

16 BY MR. EVANS: So it will be a total of two
17 however--

18 BY THE COURT: --It will be a total of two,
19 however you want to do them.

20 BY MR. EVANS: All right, Your Honor, the
21 State will use S-A1 on juror number 39, who is a
22 white male, so I assume I don't have to give
23 reason even though he was tried and found not
24 guilty. And the State will tender 41 as the first
25 alternate.

26 BY THE COURT: Is 40 gone?

27 BY MR. EVANS: Yes, sir, for cause.

28 BY THE COURT: What do you say to Mr. Kreeger
29 as the first alternate?

1 BY MR. LUMUMBA: That is Ms. Kreeger.

2 BY THE COURT: I'm sorry; it is.

3 BY MR. LUMUMBA: We would-- now how does this
4 work?

5 BY THE COURT: Well, you get two. You get two
6 challenges. You can--

7 BY MR. LUMUMBA: --use them any way I want.

8 BY THE COURT: Any way you want. But he only
9 has to tender one alternate at a time.

10 BY MR. LUMUMBA: I see. All right, we would
11 accept Ms. Kreeger.

12 BY THE COURT: All right. She is the first
13 alternate then. All right, tender me one more.

14 BY MR. EVANS: Tender 42 as the second
15 alternate.

16 BY MR. LUMUMBA: To me, Judge? I would
17 challenge 42.

18 BY THE COURT: Okay, that will be DA-1.

19 BY MR. EVANS: Tender number 44.

20 BY MR. LUMUMBA: I would challenge 44.

21 BY THE COURT: That would be DA-2.

22 BY MR. EVANS: Tender 45.

23 BY THE COURT: That puts 45 on. All right,
24 gentlemen. Let me go over these names with you.
25 Number 3, Mr. Moleta; number 6, Ms. Ladner; number
26 9, Ms. O'Neal; number 13, Ms. Young; number 16,
27 Ms.-- Mr. Dobson; number 20, Ms. Ballman; number
28 21, Ms. Partridge; number 25, Ms. Pell; number 26,
29 Ms. Lee; number 27, Mr. Cole; number 37, Ms. Hall;

1 number 38 - is that right?

2 BY MR. EVANS: Yes, sir.

3 BY THE COURT: 38 is Mr. Thurston. And
4 number 41, Ms. Kreeger, is the first alternate.
5 Number 45, Ms. Anderson, is the second alternate.
6 That agree with y'all's list?

7 BY MR. LUMUMBA: Yes, sir. It does.

8 BY THE COURT: Okay. I'm going to call the
9 jury back in, and we will get these seated, and
10 then I will dismiss the others. Let me get the
11 Clerk in here because I think she wanted to see the
12 jurors that were dismissed.

13 BY MR. LUMUMBA: Can we approach just-- well,
14 we don't have to approach. Let me just ask you a
15 question, Judge. Now these jurors are going to
16 have to go home and get their clothes, aren't they?

17 BY THE COURT: Yeah, we are going to deal with
18 that just as soon as I get them in here.

19 (Deputy Clerk enters the courtroom and confers
20 with the Court.)

21 BY THE COURT: All right, you may bring the
22 jury in.

23 (JURY PANEL ENTERS THE COURTROOM.)

24 BY THE COURT: Okay, I'm going to call out the
25 names of you who have been chosen to sit on this
26 jury and ask you to come up and be seated in the
27 jury box. There are twelve jurors and two
28 alternates. Number 3, Mr. Moleta; number 6, Ms.
29 Ladner; number 9, Ms. O'Neal; number 13, Ms. Young;

1 number 16, Mr. Dobson; number 20, Ms. Ballman;
2 number 21, Ms. Partridge; number 25, Ms. Pell;
3 number 26, Ms. Lee; number 27, Mr. Cole; number 37,
4 Ms. Hall; number 38, Mr. Thurston. Mr. Thurston,
5 okay. The first alternate is Ms. Kreeger, and the
6 second alternate is Ms. Anderson, Ms. Phyllis
7 Anderson. Where is Ms. Anderson? Here she is.

8 (Jurors come forward and are seated in the
9 jury box.)

10 **BY THE COURT:** I always have to say this. I
11 lost one one time in Attala County, so I want to
12 make sure I'm not losing one again. Mr. Moleta?

13 **BY MR. JOSEPH MOLETA:** Here.

14 **BY THE COURT:** Ms. Ladner?

15 **BY MS. BETTY LADNER:** Here.

16 **BY THE COURT:** Ms. O'Neal?

17 **BY MS. REBECCA O'NEAL:** Here.

18 **BY THE COURT:** Ms. Young?

19 **BY MS. CAROL YOUNG:** Here.

20 **BY THE COURT:** Mr. Dobson?

21 **BY MR. DAVID DOBSON:** Here.

22 **BY THE COURT:** Ms. Ballman?

23 **BY MS. CINDY BALLMAN:** Here.

24 **BY THE COURT:** Ms. Partridge?

25 **BY MS. SUSAN PARTRIDGE:** Here.

26 **BY THE COURT:** Ms. Pell?

27 **BY MS. EMMA PELL:** Here.

28 **BY THE COURT:** Ms. Lee?

29 **BY MS. STEPHANIE LEE:** Here.

1 **BY THE COURT:** Mr. Cole?

2 BY MR. TYRON COLE: Here.

3 **BY THE COURT:** Ms. Hall?

4 BY MS. GWYNNE HALL: Here.

5 **BY THE COURT:** Mr. Thurston?

6 BY MR. DANIEL THURSTON: Here.

7 **BY THE COURT:** And Ms. Kreeger?

8 BY MS. CHARLENE KREEGER: Here.

9 **BY THE COURT:** And Ms. Anderson?

10 BY MS. PHYLLIS ANDERSON: Here.

11 **BY THE COURT:** Ladies and gentlemen, we now
12 have a jury in this case, so that completes your
13 service here today and for this week. You are
14 through. I very much appreciate you being here and
15 participating in this. It is necessary for a
16 number of citizens as you can see to participate in
17 this so that we are able to get a jury. It has
18 been my pleasure to serve with you, but with that,
19 I will bid you adieu. Wait just a minute. Wait just
20 one minute. Ms. Parker wants to say something.

21 (Pause while the Court confers with the
22 Circuit Clerk, Ms. Parker.)

23 **BY THE COURT:** Well, sorry about that. If
24 y'all will wait just a second.

25 (Pause while the Deputy Clerk left the
26 courtroom to see if the jurors were needed down the
27 hall.)

28 **BY THE COURT:** Do you want to go ahead and
29 swear them?

1 BY MS. GAYLE PARKER, CIRCUIT CLERK: Yeah.

2 BY THE COURT: Ladies and gentlemen, there is
3 a special oath that you have to take as jurors in
4 this case, and I ask you if you would stand, the
5 Clerk will swear you.

6 BY THE CLERK: Please raise your right hands.
7 Do you and each of you solemnly swear or affirm
8 that you will well and truly try the issue between
9 the State of Mississippi and Curtis Giovanni
10 Flowers and a true verdict render according to the
11 evidence and the law so help you God?

12 BY ALL JURORS: I do.

13 BY THE COURT: All right, and I would ask the
14 bailiffs to come around, and they need to take an
15 oath too. Mr. Bridges is going to be a bailiff in
16 this case, but he is not going to tend to the
17 jury. He is going to tend to me.

18 BY THE CIRCUIT CLERK: Do you and each of you
19 solemnly swear or affirm that you will perform the
20 duties of bailiff and to attend to such jury and
21 perform such duties as the Court may direct to the
22 best of your skill and understanding and ability,
23 so help you God.

24 BY FOUR BAILIFFS: I do.

25 BY THE COURT: I am waiting for some-- I have
26 got to have some information from Judge Walker's
27 Court. As soon as I do, I will-- y'all may be
28 seated; I'm sorry.

29 (Pause while waiting on deputy clerk to

1 return.)

2 **BY THE COURT:** Let me ask you some questions
3 while we are waiting. How many of you brought your
4 luggage?

5 (Most of the jurors raised their hands.)

6 **BY THE COURT:** Look a there. I told y'all
7 they would do that. Okay. Let's see, Ms. Pell,
8 you did not, and who else? Okay, Mr. Cole. And
9 Ms.?

10 **BY JUROR MS. BETTY LADNER:** Ladner.

11 **BY THE COURT:** Ladner, right. And also Ms.
12 Kreeger; is that right? Okay, can somebody bring
13 it to you, or do you need somebody to take you to
14 get it?

15 **BY JUROR MS. LADNER:** My husband can bring
16 mine.

17 **BY THE COURT:** How about you, Ms. Pell?

18 **BY JUROR MS. PELL:** I can have somebody bring
19 it to me.

20 **BY THE COURT:** Okay, whatever. I will do
21 either way.

22 **BY JUROR MS. PELL:** I can have someone bring
23 it.

24 **BY JUROR MS. KREEGER:** I can call my husband.

25 **BY THE COURT:** Since y'all have been sworn--
26 oh, I'm sorry, Mr. Cole.

27 **BY JUROR MR. COLE:** I need to go.

28 **BY THE COURT:** Can somebody bring it to you?

29 **BY JUROR MR. COLE:** No.

1 **BY THE COURT:** Okay, I will have one of the
2 bailiffs then go with you to your house and get
3 your luggage and bring it back up here. Okay. I
4 tell you what I'm going to do. I'm going to let
5 y'all go to the jury room under the care of the
6 bailiffs, and they will see that you have access to
7 a phone to make that call that you need to make to
8 get your stuff delivered. Mr. Cole, we will make
9 some arrangements for somebody to go with you to
10 get your luggage.

11 (The Court confers with the Bailiff briefly.)

12 **BY THE COURT:** Yes. I'm going to allow you to
13 make a phone call under the direction of the
14 bailiff to your home to tell them that you are,
15 have been selected on this jury. Of course, as you
16 know from my instructions earlier in the case, the
17 only thing you can really tell them is you can tell
18 them that or tell them any needs that you might
19 have to be sent up here. You cannot discuss this
20 case at all with them, but you can-- yes, ma'am?

21 (One of the jurors raised her hand.)

22 **BY A FEMALE JUROR:** Approximately the time?

23 **BY THE COURT:** That you will be here?

24 **BY A JUROR:** Yes.

25 **BY THE COURT:** Well, if it was up to me, we
26 would probably be through tomorrow. But the
27 lawyers dictate that somewhat and the order of
28 proof, and I think we will be here certainly into
29 Saturday.

1 BY ANOTHER FEMALE JUROR: Okay. Is there some
2 kind of a phone number that we can give them in
3 case of emergency?

4 **BY THE COURT:** Yes, there sure will be, and we
5 will get that number, or the bailiffs will supply
6 you with that number, and you can all make a phone
7 call. In that phone call you can give that
8 information or anything like that. If you need
9 anything any time during this trial, you get hold
10 of the bailiffs, and you tell them what you need,
11 and they will get in touch with me, and we will see
12 that you get taken care of. You will be staying at
13 the Holiday Inn. Any other questions? Okay.
14 Y'all can go to the jury room and start that
15 process.

16 (JURY LEAVES THE COURTROOM.)

17 **BY THE COURT:** Okay. Now the better news -
18 they don't need you, so you are free to go. Thank
19 y'all.

20 (THE REST OF THE JURY PANEL LEAVES THE
21 COURTROOM.)

22 **BY THE COURT:** Let me see y'all up here.

23 (CONFERENCE AT THE BENCH WITH THE JURY OUT AS
24 FOLLOWS:)

25 **BY THE COURT:** It is now 4 o'clock. Mr. Cole
26 has to go get his luggage. The others have to make
27 all those phone calls and all like that. Is there
28 any point in us trying to start this thing this
29 afternoon?

1 BY MR. EVANS: It is up to the Court, whatever
2 the Court.

3 BY MR. LUMUMBA: I don't think so.

4 BY MR. HORAN: As long as we go to midnight
5 tomorrow night.

6 BY THE COURT: We will go to 5:00 tomorrow.
7 After that, we will go whatever y'all want to.

8 BY MR. LUMUMBA: You are granting our motion
9 for - what is that motion we always file? You
10 granted it?

11 BY THE COURT: Right, 5:00 tomorrow.

12 BY MR. HORAN: Tomorrow.

13 BY THE COURT: But I am willing to do what
14 y'all want to but--

15 BY MR. LUMUMBA: Well, I think, you know, from
16 my point of view this case requires a decent
17 opening statement, so I would think--

18 BY THE COURT: I don't think we can get Mr.
19 Cole's luggage here before 4:30. I think we would
20 be starting the case at 4:30. I don't want to do
21 that. I think that is pushing it too hard. But
22 here is what I would like to do. The jury has got
23 nowhere to go. Let's get started at 8:30 in the
24 morning. All right?

25 BY MR. LUMUMBA: Yes, sir.

26 BY MR. HORAN: Could we today-- we have
27 pre-marked the photographs. I asked Harvey to go
28 through the photographs, pick out the ones they
29 were going to have objections to, and I don't know

1 that you are going to have any objection to any of
2 them. It is 59 of them. I don't know if you are
3 or not.

4 BY MR. LUMUMBA: We probably will.

5 BY MR. HORAN: It may be that we could do that
6 today.

7 BY THE COURT: Well, I tell you what we're
8 going to do. You can do that motion in limine.

9 BY MR. LUMUMBA: Well, this is what I would
10 ask, Judge. Harvey is going to be doing it. If we
11 can do this, why don't we do that 8:30? It will be
12 over by 9:00. See, you are putting pressure on--

13 BY THE COURT: --Raise your right hand. I'm
14 going to put you under oath.

15 BY MR. LUMUMBA: Okay, I wouldn't put my right
16 hand on the, what is this, the law.

17 BY THE COURT: You know that don't count.

18 (Laughter.)

19 BY MR. LUMUMBA: Okay.

20 BY THE COURT: Okay, I will do that at 8:30.
21 But I really, we have got to get started at 9:00.

22 BY MR. LUMUMBA: We are going to do that.
23 Plus you are putting pressure on me. 9 o'clock, I
24 was here at 9:00, you realize that.

25 BY THE COURT: Yeah, I know. You cut it
26 close, but according to Judge Walker's clocks and I
27 will go by it.

28 BY MR. EVANS: What are we talking about as
29 far as opening statements? How long do you want us

1 to go on them?

2 **BY THE COURT:** Well, both-- you understand I
3 don't, me and you have done it. I'm going to give
4 you ample time to argue the case at the end of it.
5 Opening statements, I'm going to tell this jury
6 that they are not evidence whatsoever, and you
7 should just really tell them what you expect to
8 prove. At the end I will give you whatever time
9 you require to argue it after you have got the
10 evidence in.

11 **BY MR. EVANS:** 10 or 15 minutes?

12 **BY THE COURT:** Fifteen okay with you?

13 **BY MR. LUMUMBA:** Judge--

14 **BY THE COURT:** How about twenty?

15 **BY MR. LUMUMBA:** Why don't you give half an
16 hour, and I may not take it all. I mean really,
17 seriously. Believe me, I'm not going to argue the
18 case. I want to give my statement of what the case
19 is, but there is a lot of explaining here of what
20 we expect to show up. So I say give me 30; I
21 probably won't use it all.

22 **BY THE COURT:** Okay. I will do that.

23 **BY MR. EVANS:** Just be more stuff for me to go
24 into.

25 **BY MR. LUMUMBA:** Well, that is fine.

26 **BY MR. HORAN:** Harvey, do you want to go--
27 have you picked out the photographs you are going
28 to object to?

29 **BY MR. LUMUMBA:** We don't have any--

1 **BY THE COURT:** --Let me go over this with
2 y'all. Y'all know a week from Sunday is Easter,
3 don't you? We have all got to be home.

4 **BY MR. LUMUMBA:** Oh, you have got to be home?

5 **BY THE COURT:** Right.

6 **BY MR. LUMUMBA:** Well, let me--

7 **BY THE COURT:** --Harvey, you have got a plane
8 to catch, don't you?

9 **BY MR. FREELON:** Yeah, I do. Friday after
10 next.

11 **BY THE COURT:** I am being facetious, but I am
12 saying let's try to, let's move it along.

13 **BY MR. LUMUMBA:** I don't want to be here
14 Easter. I don't mind being here but not in this
15 capacity.

16 **BY THE COURT:** Right.

17 END BENCH CONFERENCE.

18 (FOLLOWING A RECESS, THE JURY WAS BROUGHT BACK
19 IN AND TOLD THAT THE TESTIMONY WOULD NOT START
20 UNTIL THE FOLLOWING DAY. THIS WAS NOT TAKEN DOWN
21 BY THE COURT REPORTER BY AGREEMENT OF ALL COUNSEL.)

22 COURT WAS RECESSED FOR THE DAY ON 3/23/99 AT
23 APPROXIMATELY 4:00 P.M.

24 (STATE'S EXHIBITS THAT WERE PRE-MARKED FOR
25 IDENTIFICATION PRIOR TO TRIAL INCLUDED STATE'S
26 EXHIBITS S-1 THROUGH S-59 BEING PHOTOGRAPHS AND THE
27 CORRESPONDING SLIDES BEING MARKED FOR
28 IDENTIFICATION WITH AN "A" AFTER THE NUMBER; S-60,
29 BEING THE SACK THAT CONTAINED THE TENNIS SHOE BOX;

1 S-61, BEING THE EMPTY FILA TENNIS SHOE BOX; S-62,
2 THE TIME CARD; S-63, ORIGINAL CHECK DATED 7/5/96 TO
3 CURTIS FLOWERS FOR \$82.58; THE NUMBER S-64 BEING
4 INADVERTENTLY SKIPPED; S-65, BEING THE DAILY LEDGER
5 SHEET DATED 7/15/96; S-66, S-67 AND S-68 BEING
6 WARNING AND WAIVER OF RIGHTS FORMS SIGNED ON
7 7/23/96, 7/16/96, AND 7/18/96 RESPECTIVELY; S-69,
8 BEING BROWN BAG CONTAINING GRAY MONEY BAG WITH
9 RECEIPT BOOK; EXHIBITS S-70 THROUGH S-74 NOT BEING
10 PRE-MARKED AT THIS TIME; S-75, BEING PRE-MARKED AS
11 ONE SMALL WHITE BOX CONTAINING PROJECTILE FROM
12 MATTRESS; S-76 AS BROWN ENVELOPE CONTAINING SPENT
13 PROJECTILE; S-77, WHITE BOX CONTAINING PROJECTILE
14 (1B); S-78, WHITE BOX CONTAINING PROJECTILE, (2B);
15 S-79, WHITE BOX CONTAINING PROJECTILE (1C); S-80,
16 WHITE BOX CONTAINING PROJECTILE (1); S-81, WHITE
17 BOX CONTAINING PROJECTILE (2); S-82, WHITE BOX
18 CONTAINING PROJECTILE (3); S-83, WHITE BOX
19 CONTAINING PROJECTILE (4); S-84, WHITE BOX
20 CONTAINING PROJECTILE (5); S-85, WHITE BOX
21 CONTAINING LIVE CARTRIDGE (1A); S-86, GUNSHOT
22 RESIDUE KIT; S-87, EVIDENCE BAG CONTAINING
23 PROJECTILE IN TUBE; S-88, EVIDENCE BAG CONTAINING
24 PROJECTILE IN TUBE (CARMEN RIGBY); S-89, WHITE
25 ENVELOPE CONTAINING PROJECTILE; S-90, FILA TENNIS
26 SHOE BOX (WITH SHOES); S-91, PHOTO LINEUP SHOWN TO
27 PORKY COLLINS; S-92, PHOTO LINEUP SHOWN TO
28 KATHERINE SNOW.)
29

1 (COURT WAS CONVENED AT 8:30 A.M. ON WEDNESDAY,
2 MARCH 24, 1999, WITH THE COURT, ALL COUNSEL, AND THE
3 DEFENDANT PRESENT IN THE COURTROOM BUT WITH THE JURY OUT.
4 PROCEEDINGS ON MOTIONS IN LIMINE WERE AS FOLLOWS:)

5 **BY THE COURT:** Y'all ready?

6 BY MR. FREELON: Yes, sir. First of all,
7 Judge, I think I'm going to be a little shorter
8 than Doug and Chokwe usually be, so you don't have
9 to worry about that with me, okay.

10 **BY THE COURT:** I'm going to let you do all the
11 questioning then.

12 BY MR. FREELON: No. Look, we are bringing on
13 this morning a couple of Motions in Limine that we
14 want to raise with the Court. We think that the
15 prosecutor is probably already aware of some of the
16 Motions in Limine. Basically, what we are going to
17 be doing is raising some of the issues that was
18 raised on appeal from the last trial. Now I know
19 you have plenty of work to do. You haven't had an
20 opportunity to probably read that 150 page brief,
21 but it is basically some of those same issues that
22 we feel like not only is it necessary, but it is
23 also an obligation that we raise those same issues
24 that was raised on appeal.

25 The first issue that we want to try to raise
26 to exclude, want to file a Motion to Exclude
27 Evidence regarding any evidence relating to the
28 death of Bertha Tardy, Carmen Rigby, or Robert
29 Golden. Now we noted this Court has already said

1 that some evidence is going to have to come in. As
2 a matter of fact, during the voir dire, we talked
3 about four murders or four deaths, and, Judge, we
4 probably understand that it is almost impossible
5 not to mention that four deaths occurred.

6 But what we are concerned with is the
7 testimony from a lot of the other witnesses, such
8 as Melissa Schoene. I think she is the person who
9 took most of the pictures, and she is going to, she
10 is going to introduce a lot of the evidence as far
11 as some of those pictures that she took and some of
12 the evidence, for instance, some of the pictures of
13 Bertha Tardy. Okay, well, we are saying in this
14 matter a picture of Bertha Tardy or a picture, any
15 pictures that has to do with Robert Golden or any
16 picture that has to do with Carmen Rigby, well,
17 those pictures does not add any relevancy to
18 whether or not Mr. Flowers committed the crime.

19 And as you know, in Stringer the Court asks
20 the question: Is the evidence necessary to
21 establish the guilt of the Defendant in the murder
22 of the victim? So that's what we are raising the
23 issue today, Your Honor, because we want the State
24 to stick to the issue of the death of the person in
25 question which is BoBo Stewart. We do understand
26 that some certain crime scenes photos has to be
27 shown, Your Honor.

28 But to give you another example, some of the
29 projectiles recovered near Robert Golden. Well, a

1 projectile that was recovered near Robert Golden
2 has no relevancy to this matter here, Your Honor.
3 We understand that a lot of projectiles were
4 recovered, but we are only talking about one murder
5 in this specific trial, so I think this Court
6 should be concerned only with those projectiles or
7 most of those projectiles that was recovered
8 somewhere near BoBo Stewart. The projectiles and
9 the casings that was recovered near Bertha Tardy,
10 who was nowhere near where BoBo Stewart was at,
11 Your Honor, we say that those are not, those
12 pictures and those projectiles and those casings
13 are not relevant in this matter. But especially
14 those pictures are not relevant in this matter.

15 Also, Sam Jones' testimony. Sam Jones
16 testified on many occasions about the different
17 bodies, how he found the different bodies. Well,
18 Your Honor, once again, we are only concerned with,
19 I think it is BoBo Stewart. We are only concerned
20 with Stewart in this matter. We are only concerned
21 with what condition Stewart was in, not the
22 condition of Bertha Tardy, not the condition Robert
23 Golden was in. So I think Sam Jones went off into
24 extensive testimony about where he found them at.
25 If we look back at the last transcript at the last
26 trial, that type of evidence almost had any
27 relevancy to whether or not Curtis Flowers
28 committed this murder, no relevancy whatsoever.

29 Another person who testified Steven Hayne, Dr.

1 Hayne testified and, of course, several pictures
2 was introduced. Now we did speak on yesterday for
3 the Court's sake. Some of those pictures will not
4 be introduced. We have been told some of those
5 pictures that were introduced last time would not
6 be introduced. We did speak briefly with the State
7 on yesterday. So some of those problems may be
8 alleviated this time around. But, of course, we
9 are raising those objections and asking that those
10 pictures that has nothing to do or anything that
11 has nothing to do with Stewart not be introduced
12 into evidence.

13 So evidence as far as testimony from Sam
14 Jones, testimony from Melissa Schoene, and
15 testimony from Dr. Hayne, any of their testimony
16 that concerns the other three victims, Your Honor,
17 we are asking that that be excluded from this trial
18 because specifically, we are dealing with the death
19 of Mr. Stewart. He is the victim in this matter,
20 and I am quite sure the Court well knows that,
21 "Testimony in criminal trials should be contained
22 to charge for which accused is trial"-- "Testimony
23 in criminal trials should be confined to the charge
24 for which the accused is on trial, and the
25 prosecution should not be allowed to aid the proof
26 against accused by showing he committed other
27 offenses."

28 And I think, Your Honor, by bringing those
29 other three other offenses in, of course, that's

1 what we would be allowing the State and the
2 prosecution to do here today. So that is the first
3 Motion in Limine. I guess I will let the State
4 respond to that.

5 **BY THE COURT:** All right.

6 BY MR. HORAN: Your Honor, I would like for
7 the Court, if the Court would, address whether or
8 not -- I believe, to refresh my memory, that we did
9 address this pretrial, did we not? The relevant
10 403, 404 issue? Did you make a record on that in
11 pretrial motions filed in this particular case? I
12 believe you did.

13 **BY THE COURT:** I don't know.

14 BY MR. HORAN: I think we did that in Tupelo.
15 But nonetheless--

16 **BY THE COURT:** As to what? As to whether or
17 not the other killings are going to be admissible?

18 BY MR. HORAN: Yes, sir. As to whether or not
19 you did a--

20 **BY THE COURT:** --Well, I have already ruled on
21 voir dire. I ruled in voir dire that you are going
22 to be able to get into it, and both parties
23 discussed it in voir dire. So the fact that other
24 people were killed is going to get in.

25 BY MR. HORAN: I guess my main concern is
26 whether or not the Court on the record has
27 previously balanced, applied the balancing test
28 under 403 and 404.

29 **BY THE COURT:** Well, if I have not, let me

1 rule now that I find that based-- the evidence that
2 would show that there are other killings is, has
3 more probative value than prejudicial effect, and
4 therefore it is admissible at least to some
5 extent.

6 BY MR. HORAN: Limited, yes, sir. And let
7 me-- I want to go ahead and since the Court has
8 made that finding, to go into what the State
9 anticipates we would introduce. We would
10 anticipate that we would not introduce any autopsy
11 photographs of the other three victims. We did not
12 do that at the last trial.

13 BY THE COURT: That is my memory.

14 BY MR. HORAN: We do anticipate that we would
15 use the diagram on Mr. Golden, the diagram on Mr.
16 Stewart, probably not the diagram on Bertha Tardy,
17 but would use the diagram on Carmen Rigby, and I am
18 making reference to-- the Court is well aware of
19 the diagram that Dr. Hayne uses in his autopsy
20 which is an official document that he uses.

21 BY MR. LUMUMBA: Judge--

22 BY THE COURT: --Well, are you talking about--
23 is that the diagram of the store?

24 BY MR. HORAN: Of their bodies, no, sir. The
25 diagrams of the entry wounds of those particular
26 bodies, and I will go into the reason that is more
27 relevant this time than it was at the last trial is
28 because we anticipate having an expert that would
29 testify that one of the projectiles or two of the

1 projectiles that were not identified as being a
2 positive match to the projectile retrieved from the
3 post at Doyle Simpson's residence matched. They
4 matched each other as well as the one in the
5 mattress that was recovered a day or two day
6 after. That is why that makes that more relevant
7 this time than it did, it would have been at the
8 last trial.

9 Your Honor, I think as you well know and we
10 have stated this position before, that Mr. Jones,
11 Sam Jones' testimony regarding what he found at the
12 scene is certainly relevant and probative. There
13 is absolutely no way that the State can present a
14 complete picture to this jury without explaining
15 why certain other employees in a furniture store
16 weren't there at 9:30 in the morning to either be
17 witnesses or whatever, or what happened to them as
18 well as generally what was found at the scene.

19 I think the Carr and Simon cases both address
20 that, and the Court is well aware of those two
21 cases as well as Neal v. State. It is whether or
22 not, the test is whether or not the State can
23 present its case in a rational, coherent fashion.
24 It's not whether or not it's prejudicial. It is
25 whether or not the crime scene has to be explained
26 to this jury that knows absolutely nothing about
27 this matter. There is absolutely no way that the
28 State could present its case in a rational manner
29 without presenting Mr. Jones', what Mr. Jones saw

1 as well as what Melissa Schoene, what her-- she is
2 a crime scene expert, what she found, what she
3 recovered, and all the projectiles which as the
4 Court well knows, at the last trial were identified
5 as coming from the same gun, same type of gun, and
6 now an expert will testify that certain projectiles
7 matched each other as well as one recovered from a
8 distant location.

9 And that's all I have on this Motion.

10 BY MR. FREELON: Give a response?

11 BY THE COURT: Uh-hum.

12 BY MR. HORAN: Your Honor, just one other
13 thing.

14 BY THE COURT: I have got a question for
15 y'all.

16 BY MR. HORAN: All right.

17 BY THE COURT: What is that outside the
18 door? Is that a TV camera?

19 BY MR. EVANS: That is probably bringing their
20 slide screen in and waiting until we get through.

21 BY THE COURT: Oh, Okay. Well, you know me; I
22 can't see that far. I don't want the TV folks out
23 there filming through the door.

24 BY MR. EVANS: I think that is our office
25 bringing the slides in.

26 BY THE COURT: Okay. Were you through?

27 BY MR. HORAN: Yes, sir. I will respond if
28 necessary.

29 BY MR. FREELON: Your Honor, I understand that

1 the test becomes is it more probative than
2 prejudicial, but the shots of Robert Golden is not
3 probative at all, Your Honor. It has no probative
4 value other than to show a picture of Robert
5 Golden. This is not Robert Golden's trial. There
6 will be-- if the State decides to bring that in the
7 future, we will deal with that or Mr. Flowers. We
8 will have to deal with that in the future, but at
9 this point in time Mr. Golden is not on trial. So
10 the picture of Mr. Golden lying in some blood has
11 absolutely no probative value.

12 So if there was some probative value that
13 outweighed the prejudicial value, Your Honor, maybe
14 we, you know, we could say it may be okay, but as
15 it stands right now, Your Honor, there is no
16 probative value as far as to the guilt or innocence
17 especially. It doesn't make it more probable or
18 less probable at all that because you show a
19 picture of another victim laying in some blood that
20 Mr. Flowers committed this crime. So we are saying
21 that that has no probative value even before you
22 even get to that balancing test, Your Honor. So
23 that is the reason that we are asking that the
24 picture of Robert Golden be completely stricken
25 from this matter because there is no probative
26 value in trying to determine whether this gentleman
27 here committed those murders, Your Honor.

28 **BY THE COURT:** Okay. They are entitled to
29 show the entire, to present the jury with the

1 entire picture. They are entitled to see what goes
2 on at the scene. The position of those bodies in
3 relation to each other is a relevant factor that
4 the jury should be able to consider one way or
5 another. Now what I will not allow - of course,
6 there is a lot of cumulative evidence in regard to
7 that. I mean once the State establishes the crime
8 scene and all like that, there is no point in going
9 back into it over and over and over again unless
10 the State can establish some reason for that.

11 BY MR. HORAN: Your Honor, and also like I
12 said, it would raise certain question marks as to,
13 after Mr. Jones testifies about his relationship
14 with Mr. Golden. It leaves a gap as to where Mr.
15 Golden--

16 BY THE COURT: --Well, I'm going to overrule
17 the Motion in Limine, and as any motion in limine,
18 y'all have a right to object again. If there is
19 any different grounds for it, then I will look at
20 it then.

21 BY MR. FREELON: Hold on, Your Honor. I
22 picked up the wrong transcript. The next motion
23 that we would like to raise -- Your Honor, in the
24 last trial there was some evidence that Mr. Flowers
25 had, by the State that Mr. Flowers had committed
26 another crime allegedly when he was, I guess 15, 16
27 years old. Of course, Mr. Flowers raised it in his
28 appeal. And I think on the appeal, I think the DA
29 may have spoke, have assumed-- I think Ms. Flowers,

1 Lola Flowers may have been testifying in that
2 matter, and somehow or another, I'm going to assume
3 that the State felt as though Ms. Flowers may have
4 opened the door to allow them to discuss an
5 incident that happened back in high school where
6 there was an accident-- well, whether it was an
7 accidental shooting, I don't know too much about
8 the incident.

9 But I do know during that time the State
10 brought out to the jury, which basically became
11 substantive evidence, that Mr. Flowers had fired a
12 gun back in high school when he was 15 or 16 years
13 old and shot someone, Your Honor. So we are asking
14 that that be completely excluded. I don't have to
15 tell this Court that prior bad acts or those type
16 of crimes of other crimes is completely excluded.
17 And I don't think the DA should be able to get
18 through the back door what they cannot get through
19 the front door, Your Honor. So we are asking that
20 they refrain from making any statements at all
21 dealing with Mr. Flowers' potential or possible
22 engagement that he had in high school.

23 BY MR. EVANS: Your Honor, I can address that
24 one real quick and real simple. We did not
25 introduce anything in our case in chief about prior
26 bad acts, and we do not intend to at this point.
27 In that particular case, what he is referring to
28 came out in the sentencing only in rebuttal after
29 one of his witnesses testified. That is the only

1 way it would be used this time.

2 BY THE COURT: Okay. So I would sustain that
3 Motion in Limine to that effect because I don't
4 think it would be proper for him to produce it to
5 begin with, and I did not recall it being that way
6 at the first trial--

7 BY MR. EVANS: Well, it wasn't exactly--

8 BY THE COURT: --But anyhow, that Motion in
9 Limine is sustained.

10 BY MR. FREELON: It was in the sentencing
11 phase.

12 BY THE COURT: Now it is only sustained to
13 this--

14 BY MR. FREELON: I understand.

15 BY THE COURT: If the door gets opened, he can
16 walk through.

17 BY MR. FREELON: How, but Your Honor--

18 BY THE COURT: --That kind of puts it back on
19 you.

20 BY MR. FREELON: But how easy is the door to
21 open, and that is our question?

22 BY THE COURT: You need--

23 BY MR. FREELON: --I mean--

24 BY THE COURT: I understand that, but you need
25 to discuss that with your witnesses beforehand.
26 I'm not going to allow him to get into it, but if
27 you get into it, he is entitled to rebut it.

28 BY MR. FREELON: Okay. The next Motion in
29 Limine that we would like to bring to the Court's

1 attention was also raised on the appeal. In the
2 last case I think Connie Moore testified as to some
3 matters. Your Honor, we would ask that the State
4 not be allowed to go off into any matter concerning
5 statements that-- to put it in perspective, Connie
6 Moore testified about the shoes. Of course, Your
7 Honor, you know that the shoes is very important
8 evidence in this matter. And I think some question
9 was raised as to Connie Moore as to whether or not
10 Patricia Hollman was with her when she purchased
11 those shoes. Of course, Ms. Moore at that point in
12 time said no, Your Honor. At that point in time
13 the colloquy, whatever it was, it continued to
14 pursue as far as well, are you lying.

15 I think the statement went something like
16 this: "Do you remember buying these shoes? Yes,
17 sir. You bought them in Greenwood, didn't you?
18 Yes, sir. Patricia Hollman was with you when you
19 bought them, wasn't she? No, sir. You don't
20 remember that? No, sir." And it continued on.

21 Your Honor, what we are saying is that if he
22 wants to get that type of evidence in, Your Honor,
23 the proper way to get that type of evidence in is
24 to place Patricia Hollman on the stand to testify
25 and to say that she was with her. There was no
26 evidence whatsoever presented to the fact that
27 Patricia Hollman with was with her in Greenwood
28 when she purchased the shoes. At that point in
29 time, Your Honor, once again this became evidence,

1 or it was a way to discredit Connie Moore's
2 credibility without actually bringing someone else
3 up here and place them on the stand to discredit
4 their credibility.

5 So we are saying that that basically was an
6 alleged prior inconsistent statement that had
7 absolutely no proof. There was no, no one came in
8 here to say that that was a prior inconsistent
9 statement. Once she said no, Your Honor, we think
10 any type of further examination of that should have
11 ceased at that point in time, or other evidence
12 should have been presented other than Connie Moore
13 such as Patricia Hollman to make that
14 determination.

15 And one other thing as far as what Connie
16 Moore also testified to with the District Attorney
17 also got off into cross-examination on Connie Moore
18 about her son. I think the District Attorney may
19 have said something to Connie Moore about, you
20 know, are you lying here today about your son. Let
21 me, I would like to put in the record exactly what
22 was said. I think what was said is, "Do you think
23 it is right to try to get your son to lie for
24 people? No, sir."

25 Of course, at that point in time the attorneys
26 did object, and the DA went on. "Did you tell your
27 son Lemarcus Moore that you wanted him to go to
28 Curtis' lawyer, Mr. Gilmore, and lie for Curtis?"
29 Once again she said, "No, sir." But he continued

1 on.

2 Your Honor, I think the proper way to get that
3 evidence in once again is to bring the son into
4 this Court. Once she denied that, Your Honor--

5 **BY THE COURT:** --Was she on cross-
6 examination?

7 BY MR. FREELON: Yeah, she was on cross-
8 examination. But once she denied it, there was no,
9 there is no evidence that that statement was ever
10 said. Okay, now Mr. Moore came in-- I mean her son
11 came in here and testified that it was, that is a
12 different story--well, someone else testified that
13 it was said. So that evidence came in basically
14 once again as evidence without any, without any
15 proof at all out there that this statement was ever
16 said, Your Honor. And we don't think that that is
17 definitely proper cross-examination.

18 BY MR. EVANS: If the Court would like for us
19 to argue it, I don't see any need in even arguing
20 it, but I will be real brief.

21 **BY THE COURT:** That is up to you.

22 BY MR. EVANS: This is cross-examination, and
23 plus, this is a new trial. We don't know what any
24 witness is going to say that we may need to
25 cross-examine them on in this particular trial. So
26 there is no way of ruling on it. But I think it is
27 kind of interesting that their theory is if the
28 witness says no, we can't ask them any more
29 questions. This is simply cross-examination.

1 **BY THE COURT:** And it appears to me to be that
2 that's what it is, and I couldn't rule on this in
3 any manner, whether it was or not. I would have to
4 hear the testimony. You will just have to make
5 that objection when the time comes as to that. But
6 you get wide latitude in this state on cross-
7 examination, and I didn't see anything in what was
8 cited to me as being improper.

9 **BY MR. FREELON:** Well, I guess we will see
10 today or this week how much latitude we get on
11 cross-examination.

12 **BY THE COURT:** Well, I am sure we will.

13 **BY MR. FREELON:** The next Motion in Limine
14 that we would like to raise is the Motion to
15 Exclude-- of course, I think we raised this with
16 you once before. Motion to Exclude Roxanne
17 Ballard's representation about the ledger sheet as
18 far as putting it into evidence, Your Honor. Of
19 course, that is purely hearsay, of course, unless
20 there is some type of hearsay exceptions that would
21 allow a ledger sheet to come in. And of course,
22 qualified custodians of record and the custodian of
23 that record, of course, we know was one of the
24 victims in that matter or another qualified
25 witness. And we do not think from looking at the
26 last transcript in the last trial that proper
27 predicate was laid, Your Honor, at all to determine
28 if Roxanne Ballard had enough knowledge and had
29 enough experience to be able to come into this

1 court and testify was that the proper, not only,
2 not just a routine, but was that the proper
3 practice, routine practice in that business for
4 Tardy Furniture as far as that ledger sheet is
5 concerned.

6 And not only did Roxanne Ballard testify as to
7 the ledger sheet, it was clearly hearsay when Jack
8 Matthews came in and testified as to what he
9 thought what was within that ledger sheet because
10 his knowledge of the ledger sheet actually came
11 from Roxanne Ballard. Now I know you do not become
12 an expert by going after an incident has happened
13 and talking to someone else and then who has, you
14 talk to another person who was in that business,
15 and so Jack Matthews was able to become a custodian
16 of the record simply by talking to Roxanne Ballard
17 which is not only now double hearsay, it is almost
18 triple hearsay because it came from the ledger
19 sheet to Roxanne Ballard and now double hearsay;
20 now it came back to Jack Matthews. He was able to
21 testify as to how much money he thought was within
22 that ledger sheet.

23 We think this is very important because it
24 goes directly to whether there was a robbery or
25 not, and it is one of the primary focus of this
26 trial. And without proper predicate being laid, we
27 still say that it is hearsay. But without
28 predicate being laid as to Roxanne Ballard and
29 definitely Jack Matthews has no-- he cannot testify

1 to that at all because it wasn't something that he
2 has any kind of experience with that ledger sheet
3 with that business whatsoever. And we are asking
4 the Court in this trial to exclude both of those
5 testimonies.

6 BY MR. HORAN: Your Honor, as to Mr. Matthews'
7 testimony, he did not, we did not qualify him as an
8 expert. We only put him on the stand to represent
9 to the jury at the last trial what his
10 investigation revealed as to whether or not he was
11 working a murder or a capital murder, and that's
12 basically what he did. The representations to him
13 through someone qualified to make those
14 representations to him regarding what was missing
15 was done, and that was part of his report, part of
16 his investigation. It wasn't really necessarily
17 offered for the truth of the matter asserted. It
18 was offered to prove whether or not he had
19 investigated and gained some knowledge about
20 whether or not money had been missing.

21 As to Ms. Ballard, we have already addressed
22 that twice in motion hearings, once down here and I
23 believe once in Tupelo. We anticipate that
24 Roxanne Ballard would be qualified and the Court
25 ruled that she was qualified to testify regarding
26 the routine and habit of that particular business,
27 being a family member and having worked there. And
28 we anticipate we will lay the proper predicate
29 again.

1 **BY THE COURT:** Okay, and that, both times--
2 excuse me, Mr. Freelon. Go ahead. If you are
3 through.

4 BY MR. HORAN: I am through.

5 (Pause while Defense Counsel confer.)

6 BY MR. HORAN: Like I said, Judge, one thing,
7 Mr. Matthews only testified as to what his
8 investigation revealed, not whether or not that was
9 actually that amount of money missing. Ms. Ballard
10 would be the only one that could do that.

11 BY MR. FREELON: As far as the testimony down
12 here, Your Honor, you did not make any ruling. I
13 think--

14 **BY THE COURT:** --No, I haven't--

15 BY MR. FREELON: --you reserved it on that,
16 and I think that was the first time that issue was
17 actually addressed. As far as in the first hearing
18 is concerned, the first trial on this matter, I
19 don't know if that even became an objection during
20 the first trial. I don't even think that issue was
21 raised at that point in time.

22 But regarding Jack Matthews, he can testify--
23 what he testified to not as part of his
24 investigation, but he testified as to what he, how
25 much money he thought was on that ledger sheet.
26 Your Honor, yes, he can testify that a ledger sheet
27 was found, Your Honor. But he cannot testify as to
28 how much money was missing within that ledger
29 sheet. That is not proper testimony for an

1 investigator as far as how much money, he is
2 figuring out how much money was missing on that
3 ledger sheet. He can testify that he may have
4 found a ledger sheet and the chain of custody of
5 that ledger sheet, Your Honor. But testifying
6 specifically as to what is in the ledger sheet that
7 he had no prior knowledge, he had no personal
8 knowledge of this ledger sheet before these deaths
9 occurred, Your Honor, that is -- he can point
10 blank, that is totally to be excluded as far as
11 what he thinks, how much money he thinks what was
12 in the ledger sheet.

13 As a matter of fact, he thought something was
14 different in there than what Ms. Tardy-- not Ms.
15 Tardy, but the other, Ms. Ballard thought was in
16 there. So he came up with a different amount. So
17 his testimony should be totally stricken. As far
18 as Ms. Ballard is concerned, proper predicate was
19 not laid, and we warn this Court that her testimony
20 should be excluded, of course, unless proper
21 predicates can be laid within this Court.

22 **BY THE COURT:** Okay. I'm going to reserve my
23 ruling still on both of them. You will have to
24 raise those objections at that time.

25 **BY MR. FREELON:** I understand. I have just
26 got a couple more--

27 **BY THE COURT:** --Well, let me finish. I
28 remember most of what Ms. Ballard testified to. I
29 don't remember what Mr. Matthews testified to much

1 at that time.

2 BY MR. HORAN: I think he testified he
3 retrieved the ledger sheet.

4 BY THE COURT: Well, if he did that, I don't
5 have any problem with that. As far as establishing
6 the armed robbery through Jack Matthews, I don't
7 think you can do that.

8 BY MR. HORAN: We don't necessarily have a
9 problem with that, Judge, other than him
10 testifying, you know, that he had representations
11 made to him that money was missing out of the--

12 BY MR. FREELON: --I can tell you exactly what
13 was said if you would like, but I think--

14 BY MR. EVANS: --This is a different trial
15 completely.

16 BY THE COURT: Yeah, and I'm going to wait
17 until I hear the testimony, and then I will rule
18 then.

19 BY MR. FREELON: I understand. Okay, the
20 next, I am moving right on down. Your Honor, we
21 ask that any testimony as to Patricia Hollman-- in
22 the last trial I think Patricia Hollman testified
23 to the matter that she overheard Mr. Flowers and
24 Connie Moore having an argument outside their
25 house, and I think some words were used to the
26 effect of-- excuse my language, but "Fuck them.
27 Fuck everybody down there. Just fuck everybody.
28 Just fuck everybody down there."

29 And I think the State was allowed to ask her

1 what exactly did she, what she thought was meant by
2 that. And I think Patricia Hollman testified that
3 she was talking about the Tardy Furniture murders
4 down, you know, "He is mad and angry at the people
5 down at where he used to work at." Your Honor, we
6 completely object to any kind of testimony to that
7 effect because Patricia Hollman never testified
8 that Curtis was actually, used the word "talking
9 about at work," never used the word "Tardy," never
10 used any of that. So she does not have the
11 expertise. Her lay opinion cannot just say, well,
12 I think that they were talking about the furniture
13 store down in that-- I think they were talking
14 about his job at the furniture store. He was
15 upset. She specifically answered the question.
16 "Did you hear him say anything about work?" And
17 she responded, "No."

18 But she was allowed to give her opinion as far
19 as what she thought they were talking about, Your
20 Honor, and until some evidence is put on that
21 linked him or that conversation to the furniture
22 store, Your Honor, her opinion as to what it could
23 have been, Your Honor, should not be allowed in
24 this matter. And we ask that the Court not allow
25 her to testify as to what she thought he was
26 speaking to on that matter.

27 BY MR. HORAN: Judge, Ms. Hollman's testimony
28 regarding that particular facet was based on her
29 knowledge of the Defendant's situation and the

1 relationship that he had and where he had been
2 working. It is a lay opinion. She was qualified
3 being the next door neighbor knowing about the
4 situation that he was in. She certainly was
5 qualified, and they can cross her on that. But
6 that is certainly a lay opinion that was properly
7 presented before this jury-- before that last jury
8 and will be properly presented before this jury
9 based on her knowledge. We have to lay the
10 predicate, and we did that last time for her to
11 give a lay opinion, and that's what we anticipate
12 we will do.

13 BY MR. FREELON: Well, Your Honor, first of
14 all, her knowledge is that Mr. Flowers wasn't
15 working at Tardy Furniture during that time. I
16 think that came out in the court. So she had, she
17 did not even have knowledge obviously that he was
18 no longer employed at the point in time of July the
19 16th. So obviously, she did not have the type of
20 knowledge to even make a determination that he was,
21 that they were talking about that, Your Honor. So
22 we are asking that that evidence which is extremely
23 critical in this matter, in this capital murder
24 trial, that it be completely stricken without any
25 prior other knowledge that Mr. Flowers was talking
26 about the store. I mean there is a million other
27 things that Mr. Flowers could have been talking
28 about, and to come up with the explanation that he,
29 that he and Connie was talking about arguing about

1 the store, while they - I don't know - throwing
2 chili dogs or whatever she said, I think, Your
3 Honor, is complete -- that is reaching. And we
4 don't think that overreaching should be allowed in
5 a case such as this, Your Honor. So we are asking
6 that.

7 **BY THE COURT:** Well, of course, I don't know
8 what she is going to testify to this time, and I
9 can't rule on these things. It is just like the
10 jury has got to have-- they are entitled to see the
11 whole picture. I am entitled to see what the whole
12 testimony is, and it has all got to be judged in
13 that context. And I can't take these things,
14 isolated things out of context and rule. You are
15 entitled to make those objections when they come
16 up, and I can rule then. But I have got no way to
17 sustain a motion in limine on this type stuff.

18 **BY MR. FREELON:** Well, Your Honor, the Court
19 has notice of what may very well be testified to,
20 so we--

21 **BY THE COURT:** Right, and you have got a right
22 to object to it--

23 **BY MR. FREELON:** --right--

24 **BY THE COURT:** --and as you know, the Supreme
25 Court doesn't like motions in limine to begin
26 with. I have no problem with you objecting to it,
27 but you're asking me to make rulings on speculation
28 as to what these folks will testify to in a
29 separate trial. And it has been two years-- well,

1 a year and a half since I have tried the thing. I
2 have got to see the stuff in context for me to be
3 able to judge whether or not I think it is
4 admissible.

5 BY MR. FREELON: Okay.

6 BY THE COURT: And I am willing to make those
7 judgments, but all of this is going to be hard for
8 me to do now.

9 BY MR. FREELON: Okay. Well, I just, just two
10 -- I will try to be as brief as possible with the
11 motions. One other motion, Motion to Exclude
12 anyone with the exception of Doyle Simpson from
13 talking about the murder weapon being stolen in
14 this matter. During the last trial it was brought
15 up on several occasions by different individuals
16 about a murder weapon being stolen. However, no
17 evidence was introduced as far as a police report
18 was made, or no one testified as to Doyle Simpson
19 telling them personally that someone had stole my
20 gun, Your Honor. Most of the information that came
21 about the gun being testified started from Fuzzy's
22 Chicken and went across town, and everybody else
23 got it that the gun was stolen.

24 Now we understand that Doyle Simpson can come
25 in here and testify as far as his gun being stolen,
26 but to have different witnesses getting on the
27 stand and testifying well, I was called to the
28 scene because someone told me a gun was stolen,
29 Your Honor, but there is no record at all with the

1 Winona Police Department. There is no record at
2 the dispatcher. No dispatcher reported a gun being
3 stolen. No one came in and reported a call was
4 given to them that a gun had been stolen
5 somewhere. We are asking the proper predicates be
6 laid before Jack Matthews or John Johnson can
7 testify as to why they are saying a gun had been
8 stolen.

9 And then lastly, and I understand as far as,
10 you know, we have to deal with that at that point
11 in time, but I am saying to this Court that, that
12 Doyle Simpson is the person as far as testifying as
13 far as whether the gun was stolen. And in the last
14 trial on several occasions that became-- it wasn't
15 that Doyle Simpson said the gun was stolen. It was
16 Fuzzy told someone else that the gun was stolen
17 which got back to, you know, another police
18 officer. So we are asking that, that any
19 references to the gun being stolen other than Doyle
20 Simpson actually testifying to that matter be
21 stricken as well.

22 BY MR. EVANS: Your Honor, I really don't know
23 exactly what he is objecting to. Doyle Simpson did
24 testify that his gun was stolen last time. I think
25 Bill Thornburg testified that the Sheriff's
26 Department received a report at the time they were
27 working this murder that a gun was stolen in
28 another part of town. They went and investigated
29 it. They talked to Doyle Simpson. Doyle Simpson

1 explained to them that his gun was stolen, and
2 Doyle testified to those facts. I think they are
3 clearly entitled to show that they received a
4 call. The fact that they received a call and what
5 that call was is not hearsay. That is the fact to
6 show that they followed up on it.

7 Doyle Simpson is going to testify that his
8 gun was stolen, and again, I'm not sure what order
9 we are going to put witnesses on or anything else.
10 But the fact that Doyle's gun was stolen is a
11 relevant fact of this case especially since we can
12 prove that that is the murder weapon in this case.

13 BY MR. LUMUMBA: Judge, just a brief
14 rejoinder. Judge, this is a popular misnomer that
15 we find, you know, usually advanced by prosecutors
16 in a number of cases. Why a police officer
17 responds to a scene is not relevant to a jury's
18 determination of guilt in a trial. It is only the
19 evidence at the scene, the evidence they come up
20 with and all of that which they can present
21 firsthand, or somebody else comes in and presents
22 firsthand that is relevant. So the fact that a
23 police officer got a report any kind of way,
24 whether it was official or unofficial, and it said,
25 the report said come to the scene because a gun has
26 been stolen; that is irrelevant.

27 What can be said is they can say well, the
28 police officer got a report and responding to a
29 report, I went to the scene. What was the content

1 of that report is not relevant for a jury to decide
2 because the jury is not making a determination that
3 a Judge might be making. If a motion was raised
4 suggesting that the procedures that the police
5 officers used were illegal, like if it was an
6 illegal search, illegal arrest or that they were in
7 a position they had no right to be or that it was
8 prosecutorial misconduct or police misconduct, all
9 of those kinds of things make the reason why the
10 police officer comes to the scene relevant. But to
11 let police officers say that they heard a report
12 that a gun was stolen and so came to the scene is
13 nothing but a way to circumvent the rules against
14 hearsay. It allows them to sneak in the back door
15 and to get in something that they can't get in
16 otherwise.

17 There is no exception in the book to that.
18 That is clearly offered for the truth of the matter
19 stated therein and because, and the reason it is is
20 because in front of a jury the question of why they
21 came is generally, and I won't say ever, but 90
22 percent of the time it is irrelevant. Now I can
23 think of some examples where it may become
24 relevant, but this is not one of them. They
25 brought this out on direct of these officers. Now
26 maybe if you are in a situation where the defense
27 has gotten up and tried to say something about the
28 investigation, claimed that they came there for an
29 illegitimate reason or that they were coming there

1 to violate the laws or if they were doing something
2 which they shouldn't have been done, that may open
3 the door to the prosecutor then to say why they
4 came there.

5 If the defense asked them, "Why did you come
6 there?" that might open the door for them to say
7 why they came there. That would open the door for
8 any witness to say, but the rules are no different
9 for police officers than they are for any other
10 individuals.

11 So this is not, this is not a legitimate
12 reason for them to be allowed to bring that in, the
13 content of what the radio report said or the reason
14 that they came. The fact that they came certainly
15 is relevant. The fact that they may have received
16 the report, whatever it was without stating what it
17 was, and then came, you know, that could be said,
18 but not what it said.

19 **BY THE COURT:** Okay. That Motion is
20 overruled. What have we got next?

21 **BY MR. LUMUMBA:** We have looked and we can't
22 see any -- there is, we make a Motion in Limine to
23 exclude any references in the trial through
24 witnesses to what Ms. Tardy said on any given
25 occasion unless it can be qualified as a hearsay
26 exception. From the best of our knowledge Ms.
27 Tardy made no dying declarations, so that would not
28 be entitled to come into the exception to the
29 hearsay rule. She made no any other kinds of

1 things which were relevant, but throughout the
2 trial we saw completed references in the
3 prosecution's statement and in some instances, we
4 think in a witness's statement that Ms. Tardy said
5 that some batteries were damaged, and she fired Mr.
6 Flowers as a result of that. That is clearly
7 hearsay. There is nobody that can testify about
8 that other than Ms. Tardy, and unfortunately, she
9 is no longer with us. So I would object to any of
10 that.

11 BY MR. EVANS: Your Honor, again we don't know
12 exactly what we are going to put on, but in
13 relationship to the batteries that he is talking
14 about, the way that came out was in the Defendant's
15 own statement. It was comments that he made about
16 what Ms. Tardy had done. So, you know, there may
17 be things that come out in other ways. Clearly
18 things that he told her that are in his statement
19 are going to be relevant.

20 BY THE COURT: Well, I sustain it to the
21 point, to the point that the rules of evidence
22 would preclude it.

23 BY MR. EVANS: Yes, sir.

24 BY THE COURT: If the rules of evidence allow
25 it, I'm going to let it in.

26 BY MR. FREELON: That's it, Your Honor.

27 BY THE COURT: Okay. Why don't first let's
28 get the witnesses that y'all have here in here and
29 get them sworn.

1 BY MR. FREELON: I doubt very seriously we
2 have got too many witnesses. You are talking
3 about--

4 BY MR. HORAN: --Judge, I have got one other
5 matter that I need to, they can do. I have had a
6 couple of witnesses call down here that we had
7 subpoenaed, and we told them either we didn't need
8 them or we would call them when we needed them.
9 Some of them have received subpoenas from the
10 Defense, and one of them said be here this morning
11 or in the morning. I can't see, they have had no
12 contact from Counsel for the Defendant, and I asked
13 two witnesses whether or not they had been provided
14 expenses to get down here and they said no. Well,
15 I asked one witness that. I don't, I'm just-- they
16 want me to, my victim's witness coordinator to
17 contact them this morning. They are having to take
18 off work. I can't see where they would be needed
19 before Friday.

20 Is there any way that y'all -- is that okay
21 with y'all?

22 BY MR. LUMUMBA: If you can tell us who they
23 are, we will call them ourselves.

24 BY MR. HORAN: Sherry Bailey was one. I can't
25 remember the other one. I did have Ms. Bailey from
26 the bank called me. I had to call her back. She
27 called another witness and--

28 BY MR. LUMUMBA: Okay, I don't mind you
29 telling her, you know, to be in court Friday. I

1 don't have a problem.

2 BY MR. FREELON: Who is the other person?

3 BY MR. HORAN: I can't remember. It was
4 another phone. I can't remember who it was.

5 BY MR. LUMUMBA: If he can remember at some
6 point, Judge, and tell us, we will make sure the
7 person is called.

8 BY THE COURT: Okay.

9 BY MR. HORAN: Now she is expecting to be paid
10 before she comes.

11 BY THE COURT: Well, that is another issue--

12 BY MR. HORAN: --and I think the rules provide
13 for that--

14 BY THE COURT: --There are rules and
15 regulations concerning that.

16 BY MR. HORAN: Right. And I just wanted to
17 let them know that she represented to me that.

18 BY THE COURT: Okay. Do you y'all have any
19 witnesses?

20 BY MR. EVANS: Yes, sir. Margie is gone after
21 them.

22 BY THE COURT: I don't care whether they
23 screen the witnesses. They can bring the witnesses
24 on in. I will swear them and get them on out of
25 here.

26 (NOTE: Everyone coming into the courtroom was
27 being screened with a metal detector.)

28 BY THE COURT: All the witnesses in this case
29 come up here in front of me. Just anywhere right

1 in here. Okay, each of you raise your right hand.
2 Do each of you solemnly swear the testimony you are
3 about to give in this case will be the truth, the
4 whole truth, and nothing but the truth so help you
5 God?

6 BY A GROUP OF WITNESSES: I do.

7 BY THE COURT: Okay, I'm going to invoke the
8 rule. These witnesses will be placed in the
9 State's witness room, and I don't know where that
10 is.

11 BY THE BAILIFF: The supervisors' room.

12 BY THE COURT: Okay, that will be fine.
13 That's where y'all need to go. The rule being
14 invoked, Mr. Lumumba and Mr. Freelon, y'all make
15 sure your witnesses don't get in the courtroom.
16 Okay?

17 BY MR. LUMUMBA: All right.

18 BY THE COURT: You can bring the jury in.

19 BY MR. EVANS: There are a couple of others
20 that are here. We will make sure they are sworn
21 before they testify.

22 BY THE COURT: Okay, make sure they don't come
23 in the courtroom too.

24 BY MR. EVANS: Yes, sir.

25 (THE JURY ENTERED THE COURTROOM ON MARCH 24,
26 1999, AT APPROXIMATELY 9:21 A M.)

27 BY THE COURT: Good morning.

28 BY THE JURY: Good morning.

29 BY THE COURT: Well, we are ready to get

1 started, and the first thing we do in a case is
2 that the lawyers have a right to make an opening
3 statement to you. Now I want you to understand
4 that what they are going to tell you is not
5 evidence in this case. You can't make your
6 decision based on what they say. You have to make
7 your decision based on the evidence that comes from
8 this witness stand and the physical evidence that I
9 allow you to consider when you go to deliberate.
10 And then you must apply my instructions on the law
11 to that evidence as you see it. So what they are
12 saying is not evidence. It's not to be considered
13 by you as evidence. What it is going to be though
14 is kind of an outline of what they expect to prove
15 in this case. And it will give you some idea of
16 where this case is going and where we will be
17 traveling during the next several days.

18 Mr. Evans.

19 BY MR. EVANS: Thank you, Your Honor.

20 OPENING STATEMENT BY MR. EVANS:

21 Good morning, ladies and gentlemen.

22 BY THE JURY: Good morning.

23 BY MR. EVANS:

24 I'm going to try to be fairly brief, but it is a
25 lot of details that are going to be brought out in this case,
26 and what I want to do is go ahead and lay out as many of them
27 as I can for you so you will know what to be looking for.

28 As the Judge told you yesterday, I am Doug Evans,
29 the District Attorney for Fifth Circuit Court District. We

1 prosecute all the felony cases in that district just like
2 Cono does down here in this district. This particular case,
3 of course, is brought to you on a change of venue. Now as
4 the Judge told you, and I think it is very important that we
5 emphasize this. Anything I tell you or the attorneys for the
6 other side tell you are not law. All we are doing is
7 attempting to tell you what our version of the case is, and
8 you shouldn't take anything that I say or the opposing
9 attorney says as evidence because it is not.

10 The evidence that you will make your decision of
11 guilt or innocence is going to come from this witness stand
12 right here. All we are doing is attempting to lay out for
13 you what you need to look for, the things to try to see in
14 the case. It's sort of like of a road map just to try to
15 make it a little bit clearer as you go through because as you
16 put on numerous witnesses -- we may have twenty or
17 twenty-five, thirty witnesses. We don't know exactly at this
18 point, and when you put one witness on without you having
19 heard what other witnesses say, sometimes it is not clear
20 unless you understand from the road map why that witness is
21 testifying to certain facts.

22 Now in any case it is always necessary for the
23 attorneys at different times to make objections. Now all an
24 objection is is stating that that attorney, whether it's me
25 or the attorney on the other side, does not agree that the
26 evidence is either proper or that this is the proper time for
27 it to be brought out. You know, for an example, one of us
28 may object that something is hearsay. Then the Court has to
29 rule. The Court can rule that we can either go forward with

1 that evidence or that we should stop at that point. That is
2 nothing for y'all to concern yourselves with. It is just a
3 mere technicality that the Court does. But again, anything
4 that comes from this witness stand is evidence, and y'all
5 should consider that.

6 We will try to point out to you what we expect the
7 witnesses to say. But again, none of that is important until
8 they actually say it for you. You will be the ones to make
9 the decision as to what the witnesses have said and how much
10 credibility you can give to those witnesses. You will be
11 able to use your good common sense. That is what a jury is
12 here for. You decide from your personal knowledge what is
13 believable and what is not believable. You can observe the
14 witnesses. You can look at who is involved. You can tell
15 sometimes from which particular witness is testifying. You
16 can look at them and say well, has that witness got anything
17 to gain. For example, if it's a family member of the
18 Defendant, they don't want him to go to jail. If it's a
19 police officer--

20 BY MR. LUMUMBA: --Judge. Excuse me.

21 Objection. This is opening statement, not
22 argument.

23 BY THE COURT: Well, he is not arguing any
24 facts of the case.

25 BY MR. EVANS:

26 This is what I'm talking about. There will be
27 objections all through the trial. A police officer may
28 testify; a crime lab expert may testify; a pathologist may
29 testify. You will look at that, and you determine have these

1 people got anything to gain or lose, or are they just telling
2 the facts as they see them.

3 Now I normally don't even like to bring this up,
4 but because opposing counsel brought it up in voir dire, I
5 want to make a comment about it. Race has no bearing in the
6 criminal system. The race of the Defendant doesn't make any
7 difference. The race of the victim doesn't make any
8 difference. Y'all are here for one purpose. You are here to
9 determine if a crime was committed and if this is the person
10 that committed it. His race or the victim's race has no
11 bearing and shouldn't even enter into any of our minds in
12 this courtroom. That has absolutely nothing to do with why
13 any of us are here.

14 Now I'm not sure if the Court told y'all this, but
15 I want to cover it real quick with you. Y'all probably
16 noticed during voir dire like when y'all were in the hall,
17 attorneys didn't stop and talk with you. The reason for that
18 is the Court will not let us talk with the jurors. We can
19 talk to you on voir dire. We can talk to you in opening
20 statements. We can talk to you in closing arguments like we
21 are doing, but that is the only time that we can actually
22 talk to the jury. So if we pass y'all in the hall or
23 different places and we don't speak, it is just because we
24 are not supposed to. We can't carry on a conversation with
25 y'all. It is basically just for the appearance. We wouldn't
26 want anybody to think that we were trying to say anything to
27 y'all that we shouldn't say. I wanted y'all to know that if
28 we don't speak to you, it is not out of rudeness. It is
29 because the Court won't let us do it, and that is proper.

1 I want to start off by telling you a little bit
2 about what this case is. This is a crime that occurred at
3 Tardy Furniture which is a furniture store located in Winona,
4 Mississippi. For any of y'all that don't know exactly where
5 Winona is, it's approximately 80 miles north of Jackson on
6 55.

7 Now Tardy Furniture Store that has been operated up
8 there for many years; Tom Tardy was the owner of the store
9 originally. And Tom Tardy was still living but was not
10 really able to run the store at this time. His wife, Bertha
11 Tardy, was the actual one that ran the store. Along with
12 her, Carmen Rigby was the bookkeeper that worked at the
13 store. Now at the particular time that this crime occurred
14 there were two other employees in the store. Derrick "BoBo"
15 Smith-- Stewart, I'm sorry, is the case that we are here on
16 today. He was a young male. He was a high school student.
17 He was a baseball star there in the community, and this was a
18 summer job for him. This wasn't even a full time job. We
19 will show you that this was his second day to even work for
20 Tardy Furniture.

21 A lot of the things that you see in here are going
22 to be real coincidental like that. If it had been a day or
23 two earlier, he wouldn't have even been at the store. Robert
24 Golden was the other person in the store. It was even more
25 coincidental for him because he had just been hired that
26 day. This was his first day at work. He had been hired by
27 Sam Jones, who had been an employee of the store for forty or
28 fifty years. He showed up that morning for the first time,
29 and it was the last time he would be there. This is kind of

1 how the set up started at the store.

2 Now we are going to show you that Curtis Flowers,
3 the Defendant, had worked at Tardy Furniture for a short
4 period of time. We are going to show you that he had been
5 terminated from employment, that there had been an incident
6 where he had been hauling some batteries for the store, that
7 he had dropped them off of a vehicle, and it caused damage to
8 them. Money had been held out of his paycheck to cover the
9 damage that he did to the batteries, and I also--

10 BY MR. LUMUMBA: --Judge. Excuse me.

11 BY MR. EVANS: --in addition to that money
12 being held out of his paycheck--

13 BY MR. LUMUMBA: --Can we approach for a
14 minute, please?

15 BY THE COURT: Okay.

16 BY MR. EVANS: Excuse me a minute.

17 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
18 THE JURY AS FOLLOWS:)

19 BY MR. LUMUMBA: I have got an objection to
20 this. This is what we just went into. They said
21 that they had not raised this issue before. There
22 is no way for them to prove that any money was held
23 out of his paycheck other than through him, if he
24 testifies. They are not going to put him on the
25 stand. How could they say what he is going to say?

26 BY THE COURT: Well, this is opening
27 statement. You are entitled to say what you expect
28 to prove. If you can't do it, you pay the
29 consequences. That's what opening statements are

1 about. That's the reason I don't like them.

2 BY MR. LUMUMBA: Okay, thank you.

3 END BENCH CONFERENCE.

4 BY MR. EVANS: May I proceed, Your Honor?

5 BY THE COURT: Yes, sir.

6 BY MR. EVANS:

7 Again, I apologize, but let me continue where I
8 was. We will show you that money had been held out of his
9 paycheck and that that was the last day that he worked. We
10 will show you that it was only a matter of a few days later
11 when the murders occurred at Tardy Furniture. We are going
12 to show you through Roxanne Ballard, who was the daughter of
13 Mr. Tardy, she was a lifelong employee off and on at the
14 store. She knew and understood the business records of the
15 store. We will show you through her how much money was in
16 the store at the time that this occurred. We will show you
17 that that money was missing after these people were killed.

18 Now step by step we will go through and try to
19 explain to you exactly what happened at the store. We will
20 bring in the Police Chief, Johnny Hargrove. He will testify
21 that he received a call advising him to come to the store.
22 Sam Jones, the older employee that had worked there 40 or 50
23 years, was coming in that morning. He was the one that had
24 hired Robert Golden. Sam was coming in to show these two
25 boys how to haul furniture. They had never hauled any
26 before, and he was going to help them. He walks in the
27 store, and he finds bodies laying everywhere. He is going to
28 describe to you what that scene looked like when he walked in
29 the store. He is going to describe to you how three of the

1 people in the store were already dead, and BoBo Stewart was
2 still alive and breathing. He is going to explain how he ran
3 and called the police.

4 Johnny Hargrove, the Police Chief, is going to
5 testify how he came in the scene, and when he came in the
6 scene, what they found, the bloody mess in the store with the
7 bodies laying everywhere. He is going to explain how BoBo
8 Stewart was still alive and that they called for an ambulance
9 to try to save him.

10 He is also going to explain to you that in the
11 blood around the body of BoBo Stewart there were several
12 tennis shoe tracks, and he preserved those tracks so that
13 pictures of them could be made for a later comparison. We
14 will show you how Melissa Schoene, a state Crime Lab expert,
15 was called in to preserve the different physical evidence.
16 She will describe to you what she saw at the store, what
17 physical evidence she obtained, and what she did with that
18 evidence.

19 For example, on the tennis shoe track, we will show
20 you from a Crime Lab expert that he was able to take that
21 track and determine that that track was made by a Fila Grant
22 size ten and a half tennis shoe. We will show you through
23 witnesses that that is the type of shoe that this Defendant
24 wore at the time. We will also show you that the box was
25 recovered from his house, a Fila Grant size ten and a half.
26 We will also show you that money was found, approximately the
27 amount that was taken at the store in the house that he was
28 living in.

29 From there we will go on further. We will show you

1 that at approximately the same time or an hour or two before
2 this murder, a gun was stolen in another part of town. That
3 gun was stolen from Doyle Simpson, who happens to be the
4 uncle of this Defendant. We will show you the trail that
5 this Defendant took from his house to Angelica which is the
6 factory that this gun was at. The gun was located in Doyle's
7 car parked at Angelica. When Doyle got back in his car, he
8 noticed the glove compartment had been broken open, and the
9 gun was missing.

10 Katherine Snow, an employee there at Angelica, will
11 be able to tell you, I saw this Defendant leaning against the
12 car. I'm not going to try you give you exact, somewhere
13 around 7:30 that morning. Shortly before that, we have got
14 another witness that can point out that he was leaving his
15 house walking in that general direction. Then we have
16 another witness that will be able to tell you what he saw.
17 That is James Edward Kennedy. He will be able to tell you
18 that he saw him walking down Angelica Drive cutting through
19 from Highway 51 toward Angelica's. So we have got him
20 leaving his house; we have got him going to Angelica; we have
21 got him standing by the car the gun was stolen out of.

22 Then from there, a couple of blocks toward town we
23 have got another witness, Edward McChristian, on Academy
24 Street that sees him walking in the direction of Tardy
25 Furniture. A couple of blocks further up we have got another
26 witness, Mary Frances Fleming that sees him still walking in
27 the direction of Tardy Furniture. Right in front of the
28 store we have got Charles Collins that sees him and another
29 man standing right in front of Tardy Furniture at

1 approximately the time of the murders. A few minutes later
2 we have got Clemmie Fleming, who has known him all of her
3 life, that sees this Defendant running from Tardy Furniture
4 headed back in the direction of his house.

5 We will show you that on the day this occurred the
6 officers, the investigators that were involved picked this
7 Defendant up for questioning. We will show you at the time
8 they picked him up they checked his shoe size. The shoes he
9 had on at that time were not Filas, but the shoes he had on
10 were size ten and a half.

11 We will show you that they took a gunshot residue
12 test to see if he had fired a weapon that morning, and the
13 gunshot residue test came back positive after Joe Andrews
14 from the State Crime Lab tested it showing that gunpowder
15 residue was recovered on the back of the right hand, which is
16 consistent with having a fired a gun with a person's right
17 hand that morning.

18 We will further show you that Doyle Simpson, the
19 one that had the gun stolen that is this Defendant's uncle,
20 when he reported it, after he reported it, the officers
21 questioned him and said, Have you ever target practiced this
22 gun? Can you take us to where you fired it? And he showed
23 them a post behind his mother's house that he had shot the
24 gun into. The gun was a .380 automatic. The officers
25 recovered projectiles from that post that he had fired his
26 gun, so there they knew they had the bullets that matched
27 that gun.

28 The State Crime Lab and also an expert out of the
29 State of Michigan compared the bullets that we know were

1 fired out of Doyle's gun with the projectiles in the store
2 and matched four of those projectiles. So we know that Doyle
3 Simpson's gun, the gun in the car that this Defendant was
4 standing by at 7:30 in the morning is the murder weapon. We
5 will show all of these things to you through our trial.

6 We will also show you through Dr. Hayne, who is a
7 state pathologist, that the cause of death for Derrick "BoBo"
8 Stewart was because he was shot right in the front of the
9 head, and that bullet went straight through his brain. We
10 will show you through the testimony of this expert that the
11 cause of death was that the bullet caused brain death.

12 Thank you, Your Honor.

13 BY MR. LUMUMBA: May I proceed, Judge?

14 BY THE COURT: Yes, sir.

15 OPENING STATEMENT BY MR. LUMUMBA:

16 Good morning, ladies and gentlemen.

17 BY THE JURY: Good morning.

18 BY MR. LUMUMBA:

19 I rise at this time to share with you a brief view
20 of what our expectations of what the evidence will really
21 show in this case. And I right off the top would indicate
22 that we fully expect that this evidence will disclose a
23 tragedy that occurred on the 16th of July of 1996. There is
24 no way that we dispute that police officers responded to a
25 scene and that a host of officers and other people involved
26 in law enforcement and prosecution at some point examined the
27 scene, found blood, found people who were dead, found people
28 who had died and found other things at the scene. There is
29 no dispute about that.

1 So we are not going to waste a lot of time arguing
2 about whether this body was there or whether this person bled
3 or whether it was a tragedy. We are not going to talk in our
4 case about whether BoBo Stewart was a baseball player and a
5 star. Because quite frankly, we feel that regardless of who
6 he is, he had a right to live, and we have no complaint about
7 any of the personal lives or personal things that people at
8 that store were doing. So we are not going to get involved
9 with that.

10 There is-- a case that is generally set up in two
11 different, in a two part system. The Judge will tell you or
12 perhaps has told you that that system goes like this. First
13 of all, the prosecution has an opportunity to present its
14 case, and when it presents its case, then the second part of
15 it is the defense has an opportunity to present a case if it
16 chooses to. But always keep in mind that the defense has no
17 obligations to present anything because the defense is not,
18 has no burden. It is a very important distinction here.

19 And in this case things will be a little bit
20 different. Our case will begin-- we are not having a case to
21 prove to you anything because we are not in a position to. I
22 wasn't there. Mr. Freelon wasn't there. Mr. Flowers wasn't
23 there. But our case will begin when the prosecution's first
24 witness takes the stand, and each and every witness that the
25 prosecution puts up on the stand or at least the sum total of
26 the witnesses that it puts up on the stand, we will ask them
27 questions, and before the last witness for the prosecution
28 leaves the stand, the prosecution's case will self-destruct.

29 You will have gross, wide, gaping doubts about the

1 issues which the prosecution attempts to prove and will be
2 very responsive to our request at the end of the trial to
3 bring back a not guilty verdict because you will be left with
4 serious, serious doubts in your mind.

5 What we expect will happen in this case is that we
6 will ask expert after expert as they get on the stand,
7 through your expertise, sir or ma'am, can you tell us if
8 Curtis Flowers committed this crime, and they will say
9 absolutely not. But we will ask them questions because they
10 answer things and frame information which is important.

11 You will find out, for instance, that there are
12 experts who took physical evidence from the scene. They came
13 to the scene for purposes of taking fingerprints. You will
14 find out if they found fingerprints. If they found prints--
15 you don't always find prints, and I think the expert will
16 explain that to you. But they found prints. They found
17 what we call readable prints, prints which can be used,
18 prints of value. Not a single print was the print of Curtis
19 Flowers.

20 You will find out as long as I am crossing this
21 threshold, that they took clothing from Flowers at a certain
22 point. This is not at the scene because he wasn't at the
23 scene, but from his home, and I think you will find out that,
24 you may very well find out that he voluntarily gave them
25 clothes, gave them anything they wanted, did whatever they
26 asked him to do. Not a single piece of clothing had one
27 hair, one fabric strip, one ounce of blood, one scintilla
28 blood, whether visible or invisible. The lab took it and
29 analyzed it. None of it showed anything that showed that

1 Curtis Flowers was in that store on the 16th of July of 1996
2 or at any time near that date.

3 By the way, you will not find out that Curtis
4 Flowers' employment at that store ended immediately before
5 the 16th. You will find out that Curtis Flowers worked the
6 last day at Tardy's store on the 3rd. You will find out from
7 the evidence not what the prosecution tells you. I think
8 that the credible evidence will show you that he left the
9 store, that in fact, after he left the store, calls actually
10 came to his home from Mrs. Tardy. And after receiving those
11 calls, the person who received those calls went to Mr.
12 Flowers and told Mr. Flowers. So if you want to focus on
13 what is in Mr. Flowers' mind, you will find out that they
14 told Mr. Flowers that Ms. Tardy wanted him back at work. You
15 will find out that at no time can they show you at any time
16 when Curtis Flowers expressed a mean word toward Ms. Flowers
17 or toward Ms.-- excuse me-- Ms. Tardy or toward the store.
18 You will find out that Curtis Flowers had worked prior to
19 coming to Ms. Tardy's store, and he worked some time after
20 coming to Ms. Tardy's store.

21 You will find out that Mr. Flowers had been a
22 working person. You will find out from the evidence, and
23 this will come up in the evidence is that prior to the date
24 of this incident, that at no time, at no time had Mr. Flowers
25 ever been convicted of taking anything from anybody or
26 convicted of the crime of murder, or you will find out that
27 prior to that date, in fact, that Mr. Flowers had never had
28 any convictions at all.

29 Now let me say this: That the other important

1 thing to understand from what the evidence will say, and we
2 will ask people. I'm going to ask every single person who
3 gets on the stand who there is any reason to ask, and
4 sometimes you will be able to figure it out without the
5 question being asked. Did you see Mr. Flowers with a gun?
6 No. Did you see Mr. Flowers break into anybody's car and
7 take a gun? The answer will be no. Did you see Mr. Flowers
8 go into Tardy's store and shoot anybody? The answer will be
9 no. Did you see Mr. Flowers with a gun, with the gun-- I
10 think that they will be able to tell you in this case what
11 kind of gun was actually used, was a .308 [sic] which is a
12 little pistol. Did you see Mr. Flowers with a .308 pistol on
13 the 16th of July, and the answer will be no.

14 And we have to be careful when we listen to the
15 evidence, and we will be careful. So we will ask the experts
16 who come in here and who say that they looked at it. What
17 they will tell you is they looked at a test. You have a test
18 kit like you have in various other cases on other kinds of
19 evidence. They come and what they do is sometimes they test
20 people to see if they have had any contact, and the idea is
21 to try to find out if a gun could have been fired. And so
22 they will make a test.

23 Now the expert doesn't make the test. That is a
24 very important distinction. The test is done by the police
25 officers at the police station. So the expert doesn't really
26 know personally whether the test was done right, whether, who
27 did it, how experienced they were or what they did. In this
28 particular case which you will find out is that Mr. Flowers
29 totally cooperated with the police, came to the station.

1 They say they did a test on his hand. They say they did a
2 test on the hand, and did they find out that he fired a gun?
3 Absolutely not.

4 What you will find out from the expert is that the
5 kit they gave him, and it came and it is important to
6 understand that he came into contact with several police
7 officers before he had any test. It is important to
8 understand he came into contact with several other people
9 before he had the test. It is important to understand that
10 he was at the police station for a while before he had the
11 test because what the expert will tell you is that yes, I
12 found something which is smaller than a inch. It's like
13 1/25,000th of an inch. It's what we call-- he will explain
14 what it is, but certain elements that comes from when a gun,
15 when a gun has been fired. But what he will tell you about
16 that is that that little tiny, the smallest particle that he
17 could possibly find to say that someone had come in contact
18 with either a person, a place or a gun, because he will tell
19 you that you can get that, this small, small particle if you
20 are in a place where people have been who have left things or
21 left residue from a gun being fired, if you touch a gun that
22 has been fired, or if you touch somebody who has fired a
23 gun.

24 You will find nobody that can tell you that the
25 residue comes from the gun which killed the people in the
26 Tardy case. You will find out that although there were
27 several people who allegedly were, you know, who allegedly
28 was involved either around this gun that they believe was
29 used, that none of those other people were ever tested to see

1 if they had any residue on their hand. For instance, Doyle
2 Simpson, the owner of the gun, was never tested.

3 You will find out that the person who was his
4 brother and the police officers will tell you and we will, if
5 necessary, call the witness himself Emmitt Simpson who Doyle
6 had accused him first. He was Doyle's brother. Doyle
7 accused him of stealing his gun that day and that you will
8 find out that Emmitt Simpson's hands were never tested to see
9 if he had fired a gun.

10 Moreover, from the testimony of the expert, he will
11 have to tell you there may have been hundreds of people, if
12 not thousands of people, walking around Winona in and out on
13 that day or days close to that who actually had the same
14 particle or similar particles on their hand. A shotgun will
15 leave the particle. A rifle will leave the particle. Any
16 other kind of pistol will leave the particle, and it will
17 leave the particle, the expert will tell you, not only if you
18 shoot a gun, but it will leave a particle if you touch a gun,
19 if a you touch a place where a gun is stored, if you touch
20 something that somebody has put their hands on. Police
21 officers shoot guns all the time at the range, and if you
22 touch a table, you could pick up the particle. They will
23 tell you that the particles can be picked up in many
24 different ways. And nobody will ever tie any particle to the
25 gun that was allegedly used. It will never happen in this
26 case. There will never be a time when any expert, anybody
27 else will tell you that the little tiny microscopic particle
28 that the expert says is on, in the kit, that it came from the
29 gun that was used in this case.

1 You will find out, of course, that like anybody and
2 everybody, Mr. Flowers has friends who have guns and fire
3 guns and who come into contact with him all the time. I
4 think you will find out that he came into contact with
5 somebody like that the day, the very day that this incident
6 occurred.

7 We will also see that there is no evidence at the
8 scene that puts Mr. Flowers there. Why do we say that? Now
9 the scene is inside the store. The scene is not on the
10 street. You will find out it's a public street. Mr. Flowers
11 walks the public street. Everybody walks the public street.
12 But the scene is in the store. Nobody puts Mr. Flowers in
13 the store. You also find out that nothing puts Mr. Flowers--
14 well, you will find out that there is no print of Mr. Flowers
15 in the store.

16 There is a print which the expert will tell you
17 could have come from a size ten and a half shoe, could have
18 come from a size 11 shoe, could have come from any two
19 hundred to four hundred to five hundred thousand shoes and
20 even more. There is an infinite number of shoes which could
21 have left the print. He will not be able to tell you that
22 this print came from any shoe which Mr. Flowers had at any
23 time. What he will be able to tell you is that the shoe
24 which was taken from Mr. Flowers' home and tested did not
25 meet the print, did not match the print. It did not match.
26 It was a Nike shoe, and it did not match. So that is what
27 this evidence will really say.

28 You will also find out that there are people, the
29 prosecution will bring many different people in here who will

1 testify presumably - he has promised you to - as to Mr.
2 Flowers' whereabouts on the day, and this is what the
3 prosecution says. Mr. Flowers has walked downtown on many
4 different days. You should keep in mind, and we will point
5 out that this day was no different than any other day until
6 after the deaths of the Tardy people occurred. So nobody saw
7 Mr. Flowers inside that store doing anything to the Tardy
8 people.

9 But we will ask questions and I will ask you to pay
10 very close attention to the questions and to the witnesses.
11 There may be a witness produced by the prosecution by the
12 name of Patricia Hollman. The prosecution says that they
13 will have somebody testify that they saw Mr. Tardy leaving
14 his home. Certainly -- not Mr. Tardy, I'm sorry, Mr. Flowers
15 leaving his home. Certainly Mr. Flowers left his home. He
16 left his home probably every day.

17 You will find out that Ms. Hollman can tell you no
18 way whatsoever where he was going or where he wound up at.
19 You will find out very interestingly though if she does
20 testify, pay close attention to her testimony. She will say
21 that she saw him leaving the home with pants on, black silk
22 like wind suit pants and that he had, he was also wearing a
23 T-shirt, a white T-shirt. Now what you will find out is that
24 she claims that he left around 7:30, that it could have been
25 between-- at one point she said between 7:00 and 7:30, but
26 she believes it was at 7:30. And that now-- excuse me. She
27 said that he was at his house. She saw him going in his
28 house around about 7:30. It could have been anywhere between
29 7:00 and 7:30.

1 You will find out that the young lady who got a
2 brief glimpse at somebody who was supposed to be, according
3 to her testimony, in the parking lot at this place where
4 Doyle Simpson works and who she claims was next to his car.
5 What you will find out is that at the very most or around the
6 very same time that Ms. Hollman says that Mr. Flowers is at
7 his home leaving his home, she is supposed to be seeing this
8 person in the parking lot which is a distance from Mr.
9 Flowers' home, at least a mile, I believe, or perhaps more.

10 So putting their testimonies together, you can
11 figure it out for yourself. You find out she got a brief
12 glimpse. You will find out that she never, she actually had
13 seen Mr. Flowers before. She had seen Mr. Flowers singing.
14 He sang in the gospel group, and she had seen him before.
15 You will find out on the day of the incident when she saw
16 this man or said she saw this man, she did not, she did not
17 say that the person was Mr. Flowers. She didn't say the
18 person was Mr. Flowers for I believe almost a month. And you
19 will find out that she says that she knew Mr. Flowers even
20 before the incident or had seen him because of singing in a
21 gospel group.

22 One other important thing that we will point out to
23 you is that because the community was anxious to solve this
24 crime and solve this incident, they did something which was
25 lawful, but it also may have had some consequences. They
26 offered a reward. So they came up first of all with 8,000, I
27 think, and then 15,000 and then 30,000. Most of these
28 witnesses that the prosecution will put on the stand, you
29 will see, were very conscious of the reward. In fact, the

1 reward was publicized very widely through posters you will
2 see, and the witnesses will tell you they knew about it.

3 And in fact, in one case one witness will admit,
4 this same witness I am talking about, Katherine Snow, I think
5 her name, who said she saw somebody in the parking lot, that
6 she saw a picture of the funeral for one of the deceased, who
7 happened to be black by the way. She saw the pictures of one
8 of the deceased in the newspaper of the Winona newspaper, and
9 at the same time that she saw the picture of the deceased's
10 funeral in the Winona newspaper, in that same paper you will
11 see, or a copy of the paper, right next to it is a big thing
12 about reward offer and they talk about the reward.

13 On the back of the paper the day that Mr. Flowers
14 was arrested, the day that he was arrested or at the time
15 that he was arrested they have a newspaper which on the front
16 of it they have Mr. Flowers getting arrested. On the back
17 they have got a big advisement about the reward is still
18 good. And you will see repeatedly that witnesses pop up late
19 in the ball game. Witnesses get taped statements which don't
20 come until late in the ball game, and even though no witness
21 sees him in the store and sees him do anything in the store,
22 there is witnesses who now they will put on the stand who
23 claim that they can tell even though they had no reason to
24 know that anything was going to happen that day, that that
25 was something so special that they remember that they saw him
26 that day when many of these witnesses are in a position to
27 see him any day when he walks to the store or downtown or to
28 the bank or anywhere else. And it would certainly be
29 difficult for them to determine whether one date was

1 different than the other. No reason to tell.

2 But we will ask these witnesses questions, and I
3 don't want to go into too much detail now, but you will see
4 that there is conflicts. They don't even have him wearing
5 the same clothes. One witness has him leaving a home with a
6 black silk wind suit pants and supposed to have a white
7 T-shirt on, and the witnesses who are supposed to see him
8 just a little while later, according to the prosecution's
9 theory of the case, got him wearing - let me see; what is the
10 guy got him wearing? - or saw him a short while before. One
11 guy has got him bearing a black sweater. I don't know why
12 somebody would wear a black sweater in July, but they have
13 got him wearing a black sweater and white pants. One witness
14 has got him wearing black pants, and another witness has got
15 him with white pants and then got a black sweater on.

16 And then according to Doyle Simpson, he talks to
17 the lady who is supposed to have seen him in the parking lot
18 next to the car not doing anything to the car according to
19 her, okay, not breaking in, not doing a thing to the car.
20 And by the way, Doyle Simpson will tell you he don't know,
21 according to him, - you will find out too that he is not
22 always a truthful person because he lied about his gun. He
23 claimed that the gun, you will find out that this Doyle
24 Simpson is not believable, that he lied about where he got
25 the gun from in the first place. He got the gun from a guy
26 named Ike who he may very well-- they may tell you some
27 things about Ike. Maybe they won't. I don't want to put
28 them out if we don't get them into evidence.

29 But he lied and said he got it from his uncle, and

1 some of the members of the family caught him trying to call
2 the uncle and getting that uncle to vouch for him, but the
3 uncle refused to vouch for him. You will find out that this
4 is the same Doyle Simpson who apparently accused his brother
5 of trying to take the gun according to his brother.

6 But anyway, we will compare where these witnesses
7 say they saw him and what he was supposed to have on at the
8 time because they are all different. None of them are the
9 same. All of them have got him wearing something different
10 right around the same time that they are supposed to be
11 seen. One of them has got him wearing a silk, a black silk
12 like, and you know, most of those things aren't silk, but you
13 know how they are slick like, pants and you know like, kind
14 of like a jogging suit or a wind suit they call it, a wind
15 suit. Another person has got him wearing dressy looking
16 clothes - a white button down shirt and a windbreaker.

17 Doyle Simpson says the woman told him that the
18 person she saw in the parking lot had shorts on and a cap.
19 The woman comes in and says, I don't know what he had on, but
20 I know he didn't have a cap on.

21 And then they will bring a witness who will say
22 that he saw two people in front of-- and we are going to go
23 into this witness. We are going to go into this witness.
24 Remember the rule of order and all that kind of stuff, but we
25 are going to go into this witness. This witness is going to
26 say that he saw two people in front of Tardy's that day, and
27 maybe he did. But then the question becomes really does it
28 have any relevancy because first of all, when you trace the
29 time, this is one of the few witnesses we can pinpoint a time

1 on because we will be able to look at a receipt from the
2 store where he was in the Wal-Mart store about 9:43. The
3 incident is supposed to have happened in this case somewhere
4 around 10:00.

5 In fact, Mr. Sam Jones may speak of, and we want to
6 talk to Sam because Sam is going to tell you some things. He
7 is the one that went in there and discovered the bodies. He
8 will tell you he discovered the bodies, he says before 10
9 o'clock. Okay, that's what he says. Now this guy is at
10 Wal-Mart at 9:43, and you may not have been to Winona before,
11 but we will walk you through it, and then he goes from
12 Wal-Mart in the opposite direction first, all the way in the
13 opposite direction to some place called Don Mitchell's. I
14 may be saying the name wrong, but we will get it straight.
15 And then he goes all the way from Don Mitchell's back to his
16 house, and then his wife tells him, you have been downtown,
17 man, a couple of times, and you still haven't done what you
18 are supposed to do. Where is the cleaning? Right, okay.

19 So then he goes back over to Tardy's, and there is
20 no way that he could have gotten there before 10 o'clock
21 since he left Wal-Mart at 9:43. Then he says he sees two men
22 standing outside, standing not outside Tardy's, but really in
23 front of the alley next to Tardy's or the store which is
24 across from that alley from Tardy's which is called Coast to
25 Coast. So they are really not out in front of Tardy's. And
26 he says he sees two men, just takes a brief glimpse. That is
27 all he ever took was a brief glimpse and saw one of them's
28 face briefly, like zoom. And then these people leave walking
29 away from their car, which is not in front of Tardy's to

1 start off with, going north which is away from Tardy's. And
2 this is after, this has got to be after 10 o'clock.

3 And so one would wonder what are they doing? They
4 are walking away from their car. If people have been killed
5 if they had anything to do with it-- you know what I'm
6 saying? Walking, not running. And he says the two men are
7 arguing with each other, and he says even though he got a
8 brief glimpse of these men, he can tell that one of them was
9 Curtis Flowers. Now that is not quite that clear because he
10 is really kind of-- you will see. Most of the time he says,
11 "I believe it was." "It looked like him." "I think it
12 was." And most of the time he says that, but every now and
13 then they will push him to the point that he says, "That was
14 the man that was in front of Tardy's," from this brief
15 glimpse of a person who he had never seen before in his
16 life.

17 But whoever the person was, you will see from the
18 evidence they weren't going toward Tardy's. They were going
19 away from Tardy's, and they had a car and they were with
20 somebody else. And they were walking away from their car and
21 away from Tardy's at a time when the murders had to have
22 happened already.

23 And then finally, you will have an interesting
24 little witness who owed Tardy's some money for furniture
25 whose testimony will have to be judged, who says that she saw
26 Curtis Flowers, you know, sometime later and all that kind of
27 stuff. She saw Curtis Flowers running in a direction--
28 nobody ever says they saw him in the store or at the store
29 but running in the direction which would have been away from

1 the store, you know, not at a point next to the store but a
2 good little distance from the store but just running.

3 Now if I'm not mistaken, that is the one that I'm
4 unsure of, but we will see what the evidence says. I think
5 she says he has a hat on. The other guy didn't see no hat on
6 these people. In fact, he is describing what the guy who is
7 just supposed to have seen the two men who had a car. So if
8 you had a car and you are Curtis Flowers, I don't know why
9 you would be running anywhere on foot.

10 And then if they put that witness on, we are going
11 to have to bring some other witnesses in here because a
12 couple of witnesses will straight out tell you that she told
13 them that she was saying that for the money. She is saying
14 that for the money. That's what she told a couple of her
15 friends, and they will tell you. For the money; either for
16 the reward or for at least the benefit of Tardy not making
17 her pay her furniture back, and you will see from the
18 evidence at least at the last time we interviewed her, she
19 hadn't paid the money back to Tardy.

20 So we welcome these witnesses, and we will talk to
21 them when they take the stand. Her name is Clemmie Fleming.
22 There is another woman named Jeanette Fleming. And we don't
23 know what is going to happen when they come in here. We just
24 tell you what has happened in the past. She comes in. Now
25 she is supposed to see Curtis -- she doesn't say she saw him
26 in the store or at the store, but she is walking, and their
27 theory is he is walking toward the store. She says that he--
28 she is the one that says he is dressy, and then he says to
29 her, "Hey, good looking. What is going on?"

1 Now here is a man in their theory that is supposed
2 to be so bad that he fired-- he is so enraged. Now he is
3 just, he is enraged like two weeks after he has been fired.
4 And he is so enraged he is going to kill four people or one
5 person or two people or however many people, and he stops and
6 tells somebody, "Hey, good looking. What is happening?" And
7 she said, "Oh, everything is fine," and he goes on.

8 And then she tell us that she went on and went to
9 her friend's house. There are a couple of problems with
10 that. First of all, we have the man where she left off her
11 car that said she walked in the opposite direction of the
12 direction she claims she walked in when she would have met
13 Curtis. She walked in a different direction. I don't know.
14 I mean, you know, we don't, you know, we do -- the man at the
15 store will tell you or at least he will tell you that he told
16 us that she walked in the opposite direction. And she is
17 related to Clemmie Fleming, the other woman who the witnesses
18 will tell you she said she was doing it for the money. She
19 is Clemmie's aunt.

20 Clemmie's own sister will tell you that to the best
21 of her knowledge, Clemmie was at her house that day, said
22 nothing about seeing Curtis Flowers, and actually went to the
23 scene of the incident after it happened with her, and still
24 said nothing about seeing Curtis Flowers.

25 The man who Clemmie said drove her to the scene, if
26 they call him, we will get him to tell you is that Clemmie is
27 not telling the truth because when he was driving her, he
28 first of all, never went in front of Tardy's. And secondly,
29 they did see-- he saw a young person running, but she wasn't

1 in the car when he saw him, and the person was not Curtis,
2 and he will tell you that the police came to him trying to
3 get an identification on Curtis Flowers, and they didn't show
4 him a lineup like they are supposed to see if you can pick
5 somebody out. But they show him one picture and said, Was
6 that the man that you saw running, and he said no.

7 And he will tell you that Clemmie worked on him and
8 the police worked on him, and then later on he was prepared
9 to back her up and perhaps did back her up at least once
10 about her being in the car when he saw the man, but he never
11 backed her up on saying it was Curtis. But then if he is
12 called, he will tell you that he is coming clean now, and in
13 fact, that is not what happened, that she was not in the car
14 at the time that, that he saw the person, first of all, and
15 secondly, they never went in front of Tardy's to start of.
16 He has always stated that, that they never went in front of
17 Tardy's.

18 So what the evidence will show in this case is that
19 Mr. Flowers is charged with a crime which they have no
20 witnesses to say that they saw him commit; that they have no
21 prints of any kind that could positively put him in the
22 store. And in fact, the footprint that they claim they have
23 is a print that could have come from any of a thousand
24 people, at least a thousand, and from any, and from a number
25 of different shoes. We are going to work with this expert
26 when he gets on the stand here, but on his own personal
27 knowledge, this expert doesn't know how many shoes could have
28 made that print. And he definitely will tell you he is not
29 saying that any shoe that Curtis Flowers ever wore made this

1 print. He will definitely tell you that.

2 So the case will proceed, and the evidence will
3 speak for itself which makes it unnecessary for me to
4 continue to speak for the evidence. At the end of the trial
5 we will come to you and we will ask you to return a not
6 guilty verdict. And we believe consistent with your own good
7 judgment and your good conscience and your honest efforts to
8 return a good verdict, that you will have no problem in
9 meeting our request.

10 There will be certain police officers who will
11 testify that I am sure we may take issue with. We will never
12 take issue with the fact that they are trying to, you know,
13 that they don't believe that the people should have been
14 murdered. We are never going to take issue with that. We
15 are never going to take issue to the fact that most of them
16 are trying to do their job.

17 But what we will take issue with is that I think
18 that in some cases you may see that they shade their
19 testimony and that they perhaps didn't do everything that
20 they should have did, at least about taking those tests.
21 Because if they didn't take a test of Emmitt Simpson's hands,
22 didn't take a test of Doyle Simpson's hands, and then they
23 come in here with one tiny particle which cannot be said to
24 have been fired from that same gun, those are the questions
25 that we will raise. And we will rest with the evidence quite
26 happily, and we certainly expect that this jury will not
27 allow any other considerations to get in its way.

28 Thank you.

29 **BY THE COURT:** Who will you have first?

1 BY MR. EVANS: Melissa Schoene.

2 MELISSA SCHOENE,

3 a white female called to testify as a witness by the State of
4 Mississippi, having first been duly sworn, testified as
5 follows, to-wit:

6 BY THE COURT: State your name for the record,
7 please.

8 BY THE WITNESS: My name is Melissa Schoene.
9 My last name is spelled S C H O E N E.

10 DIRECT EXAMINATION BY MR. EVANS:

11 Q. Good morning, Ms. Schoene.

12 A. Good morning.

13 Q. Ms. Schoene, would you please state for the ladies
14 and gentlemen of the jury how you are employed?

15 A. Yes, sir. I am employed by the Mississippi Crime
16 Laboratory in Jackson.

17 Q. How long have you been employed there?

18 A. I have been with the Mississippi Crime Laboratory
19 for approximately five years.

20 Q. Would you give us a little of your educational
21 background, please?

22 A. Yes, sir. I earned a Bachelor of Arts degree in
23 criminal justice from the University of Alabama and a
24 Master's Degree of Science also from the University of
25 Alabama in the field of organic chemistry.

26 Q. All right, on Tuesday July the 16th of 1996, what
27 were your job duties?

28 A. I was assigned to the crime scene response unit,
29 and it was my responsibility to respond to requests from law

1 enforcement agencies when assistance was needed with the
2 documentation and collection of evidence from violent crime
3 scenes.

4 Q. All right, before your employment with the Crime
5 Lab, did you have any related type work experience?

6 A. Yes, sir. Prior to my employment with the
7 Mississippi Crime Laboratory, I was employed by the Alabama
8 Department of Forensic Sciences on a part time basis for
9 approximately two years, and I was employed by the Northport
10 Police Department on a part time basis for approximately two
11 years.

12 BY MR. LUMUMBA: Judge, if it is of any worth,
13 I don't have an objection to Ms. Schoene's - and I
14 hope I am pronouncing it--

15 BY THE WITNESS: --Yes, sir.

16 BY MR. LUMUMBA: - qualifications as an
17 expert. I don't have an objection.

18 BY THE COURT: Do you accept that
19 stipulation?

20 BY MR. EVANS: Yes, sir. We accept her as an
21 expert in the field of crime scene investigation
22 and evidence collection.

23 BY MR. LUMUMBA: Those are the fields that I
24 have no objection to her testifying.

25 BY THE COURT: Okay. The Court accepts her as
26 an expert in that field. She will be allowed to
27 testify.

28 BY MR. EVANS:

29 Q. Ms. Schoene, I want to direct your attention

1 specifically to July the 16th, 1996, and ask you if you had
2 an occasion to be called to Winona, Mississippi, on that
3 date?

4 A. Yes, sir. I was. I was advised by the Director of
5 the Crime Laboratory, Director James, that Winona Police
6 Department and the Mississippi Highway Patrol investigators
7 have requested our assistance at a furniture store in Winona,
8 Mississippi, where there was believed to be a multiple
9 homicide.

10 Q. All right, and what did you do in response to that
11 request?

12 A. Well, she-- I left the Crime Laboratory at
13 approximately 11:55 that morning, and I brought with me
14 another forensic scientist. Her name is Jodi Creel. We left
15 the Crime Laboratory and arrived at Tardy Furniture Store in
16 Winona at approximately 1:10 or 1:15 that afternoon.

17 Q. When you arrived at Tardy Furniture Store, what did
18 you observe?

19 A. When I arrived at the furniture store, typically
20 the first thing that we do when we are assisting a law
21 enforcement agency with the collection of evidence at a crime
22 scene is to obtain a history of the crime and of the
23 circumstances that surround the case up until the time that
24 they have decided to request our assistance and we arrive. I
25 obtained a brief history of what had happened and what
26 investigators had done and what, who had been inside of the
27 crime scene, and then I surveyed the crime scene. And what
28 that means is I walk through the area and observe what is
29 lying around, look at different things, observe how many

1 victims are there and that type thing. After surveying the
2 scene, then I proceed to documenting and collecting
3 evidence.

4 Q. Okay, did you also take photographs at the scene?

5 A. Yes, sir. That is part of the documentation
6 procedures that we use.

7 Q. Okay. In addition to taking photographs, did you
8 actually recover some physical evidence at the scene?

9 A. Yes, sir. I took photographs and recovered
10 physical evidence.

11 Q. Ms. Schoene, I will hand you Exhibits S-1 through
12 S-3 and S-1A through S-3A and ask you, if you would, to look
13 at those.

14 A. (Witness complies.) I am finished.

15 Q. Can you identify what those are?

16 A. Yes, sir. The slides are slides that I took at the
17 crime scene. The photographs are representations of what is
18 in the slide. They are not exactly the same. The
19 photographs appear to be cropped meaning that there might be
20 a little bit more area in the slide, but then these slides
21 were made into photographs, and they do match, State's
22 Exhibit S-1, S-2 and S-3.

23 Q. In S-1, S-2 and S-3, do those pictures truly and
24 accurately depict what you saw when you arrived at the store
25 on the outside of the store?

26 A. Yes, sir, they do. These are photographs of the
27 exterior of the furniture store.

28 BY MR. EVANS: Your Honor, I offer these six
29 exhibits into evidence.

1 BY MR. LUMUMBA: Can I see those briefly,
2 Judge?

3 BY THE COURT: Yes, sir.

4 BY MR. LUMUMBA: Make sure we coordinate it.
5 I don't need to see the slides, just the picture.

6 BY MR. EVANS: Well, I have got them
7 together.

8 BY MR. LUMUMBA: Judge, I really don't have
9 any objections. At a later time I will just, I
10 will take the opportunity to coordinate what is
11 being entered in these exhibits with what we have
12 here.

13 BY THE COURT: Okay. Let them be marked as
14 exhibits and admitted.

15 BY MR. LUMUMBA: And that is S-1 through?

16 BY THE COURT: There were six. That's S-1, 2,
17 3 and 1A, 2A and 3A; is that right?

18 BY MR. EVANS: Yes, sir.

19 (PHOTOGRAPHS PREVIOUSLY MARKED AS STATE'S
20 EXHIBITS S-1, S-2, AND S-3 FOR IDENTIFICATION AND
21 THE CORRESPONDING SLIDES MARKED AS S-1A, S-2A, AND
22 S-3A FOR IDENTIFICATION WERE NOW ALL ADMITTED IN
23 EVIDENCE.)

24 BY MR. EVANS: Your Honor, in an attempt to
25 try to save some time, I have two other stacks of
26 photographs I would like to show Defense Counsel
27 that we intend to introduce at this point.

28 BY THE COURT: Okay.

29 BY MR. LUMUMBA: Judge, for the record if it's

1 okay--

2 BY MR. EVANS: --I haven't offered them yet.
3 I am just showing them to you.

4 BY MR. LUMUMBA: Oh, okay.

5 BY THE COURT: Let her identify them.

6 BY MR. LUMUMBA: Okay, that is fine.

7 BY MR. EVANS: This stack, Your Honor, for the
8 record is Exhibits 19, 20, 21, 22, 23, 24, 25, 26,
9 27, 29, 30, 31, and 38. They are already marked
10 for identification.

11 BY THE COURT: Okay, you want to get her to
12 identify them.

13 BY MR. EVANS: Well, I thought I would do the
14 same thing with this other stack next so that--

15 BY THE COURT: --Okay.

16 BY MR. EVANS: I am trying to figure out a way
17 of making it go a little faster.

18 BY THE COURT: That is fine.

19 (More photographs shown to Mr. Lumumba. Pause
20 while Mr. Lumumba confers with Mr. Freelon.)

21 BY MR. EVANS: Okay, Your Honor, this stack of
22 photographs are Exhibits 8, 9, 10, 11, 12, 13, 14,
23 15, 16, 17, and 18.

24 BY MR. EVANS:

25 Q. Ms. Schoene, I will show you first Exhibits 8
26 through 18 and slides 8A through 18A and ask you if you would
27 compare them for me, please.

28 A. Would it be easier for me to put them back, put
29 them together, or would you like a stack of slides and a

1 stack of--

2 Q. Either way.

3 A. Do them like this?

4 Q. Whichever will be easier for you.

5 A. (Pause while witness looks at exhibits.) Should I
6 say them as I go? Would that make it easier?

7 BY THE COURT: Why don't you just-- well,
8 whatever.

9 BY THE WITNESS:

10 A. Because I can say "S" Exhibit S-8 does agree with
11 slide 8A.

12 Q. Okay.

13 A. State's Exhibit S-9 does agree with S-9A.

14 Q. All right.

15 A. State's Exhibit S-10 does agree with S-10A.

16 State's Exhibit S-11 does agree with S-11A. State's Exhibit
17 S-12 does agree with S-12A. State's Exhibit S-13 does agree
18 with S-13A. State's Exhibit S-14 does agree with S-14A.

19 State's Exhibit S-15 does agree with S-15A. State's Exhibit
20 S-16 does agree with S-16A. State's Exhibit S-17 does agree
21 with S-17A. And State's Exhibit S-18 does agree with S-18A.

22 Q. All right, Ms. Schoene, Exhibits S-8 through S-18
23 along with the corresponding slides, do they also truly and
24 accurately depict the scene as you saw it that morning?

25 A. Yes, sir. They do.

26 BY MR. EVANS: Your Honor, I offer these
27 exhibits into evidence.

28 BY MR. LUMUMBA: Your Honor, these are which
29 ones? 8 through what now? I'm sorry.

1 BY MR. EVANS: 8 through 18 and the
2 corresponding slides.

3 BY MR. LUMUMBA: 8 through 18. Can I see them
4 one more time? We don't need the slides. We have
5 an objection to S-18 for the reasons stated already
6 as it relates to--

7 BY THE COURT: Okay.

8 BY MR. LUMUMBA: And prejudicial.

9 BY THE COURT: Yes, sir.

10 BY MR. LUMUMBA: We have an objection to
11 S-17. We have no objection to S-16. We have no
12 objection to S-15. We have no objection to S-14.
13 We have no objection to S-13. And we have no
14 objection to S-12. S-11, we have no objection to.
15 S-10, we have no objection to. S-9, we have no
16 objection to. And S-8, we have no objection to.
17 Essentially, we have objected to every picture that
18 had a body in it.

19 BY THE COURT: 17 and 18, was that it?

20 BY MR. LUMUMBA: Right.

21 BY THE COURT: Could I see them?

22 BY MR. LUMUMBA: Yes, sir.

23 (Photographs handed to the Court.)

24 BY THE COURT: Okay. The objection is
25 overruled. Let them be admitted.

26 (PHOTOGRAPHS AND CORRESPONDING SLIDES
27 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-8 AND S-8A
28 THROUGH S-18 AND S-18A FOR IDENTIFICATION WERE NOW
29 RECEIVED IN EVIDENCE.)

1 BY MR. EVANS:

2 Q. Your Honor, next Ms. Schoene, I want to hand you
3 this group of pictures which again is Exhibits 19, 20, 21,
4 22, 23, 24, 25, 26, 27, 29, 30, 31 and 38, and ask you to
5 compare them with the corresponding slides?

6 A. (Pause while witness complies.) State's Exhibit
7 S-19 does correspond to S-19A. State's Exhibit S-20 does
8 correspond to S-20A. State's Exhibit S-21 does correspond to
9 S-21A. State's Exhibit S-22 does correspond to S-22A.
10 State's Exhibit S-23 does correspond to S-23A. State's
11 Exhibit S-24 does correspond to slide S-24A. State's Exhibit
12 S-25 does correspond to S-25A. State's Exhibit S-26 does
13 correspond to S-26A. State's Exhibit S-27 does correspond to
14 S-27A. State's Exhibit S-29 does correspond to S-29A.
15 State's Exhibit S-30 does correspond to S-30A. State's
16 Exhibit S-31 does correspond to S-31A. State's Exhibit S-38
17 does correspond to slide S-38A. That is all.

18 Q. Do all of these photographs and slides that you
19 have just identified also show the crime scene as you found
20 it that morning?

21 A. Yes, sir. They do.

22 BY MR. EVANS: Your Honor, I offer Exhibits 19
23 through 27 with corresponding slides, Exhibit 29
24 and 30, 31, and 38 along with the corresponding
25 slides into evidence.

26 (Mr. Lumumba looks at photographs.)

27 BY MR. LUMUMBA: Judge, by the way, any
28 objection we have to the pictures, also we object
29 to the corresponding slides.

1 **BY THE COURT:** I understood that.

2 BY MR. LUMUMBA: Okay. We would object to
3 S-19. We object to S-20, S-22, S-23, S-24, S-25,
4 S-26, S-27. We have no objection to S-2-- we have
5 no objection to S-29. No objection to S-30. We do
6 object to S-31. And we have no objection to S-38.

7 (Photographs were shown to the Court.)

8 **BY THE COURT:** Okay, the objection is
9 overruled. Let them be marked.

10 (PHOTOGRAPHS AND CORRESPONDING SLIDES
11 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-19 AND
12 S-19A THROUGH S-27 AND S-27A FOR IDENTIFICATION AND
13 STATE'S EXHIBITS S-29 AND S-29A THROUGH S-31 AND
14 S-31A FOR IDENTIFICATION AND STATE'S EXHIBIT S-38
15 AND S-38A FOR IDENTIFICATION WERE NOW RECEIVED IN
16 EVIDENCE.)

17 BY MR. EVANS:

18 Q. All right, Ms. Schoene, before we actually get into
19 looking at the pictures, did you also have an occasion during
20 your crime scene investigation to do any sketching of the
21 scene?

22 A. Yes, sir. I did.

23 BY MR. EVANS: Your Honor, may I have these
24 two items marked for identification?

25 **BY THE COURT:** Yes.

26 ("POLISHED" SKETCH OF STORE OFFICE AREA BY MS.
27 SCHOENE WAS MARKED AS STATE'S EXHIBIT S-72 FOR
28 IDENTIFICATION. SKETCH OF STORE AREA WAS MARKED AS
29 STATE'S EXHIBIT S-73 FOR IDENTIFICATION, AND

1 OVERLAY OF STORE OFFICE AREA WAS MARKED AS STATE'S
2 EXHIBIT S-74 FOR IDENTIFICATION.)

3 **BY THE COURT:** While she is doing that, y'all
4 give me the numbers that have been admitted. I
5 have not marked my list.

6 BY MR. EVANS: Exhibits 1 through 3, 8
7 through--

8 **BY THE COURT:** --Wait. Okay, 8 through what?

9 BY MR. EVANS: 8 through 27.

10 **BY THE COURT:** 8 through 27.

11 BY MR. EVANS: 29, 30, and 31.

12 **BY THE COURT:** 29 through 31.

13 BY MR. EVANS: Right, and 38.

14 BY MR. LUMUMBA: All those you say have been
15 admitted?

16 BY MR. EVANS: Right. Just those so far.

17 BY MR. EVANS:

18 Q. Ms. Schoene, first I will show you -- well, let me
19 show opposing counsel what the exhibits are.

20 (Exhibits S-72, S-73, and S-74 for
21 identification were shown to Defense Counsel.)

22 BY MR. EVANS:

23 Q. Ms. Schoene, I will hand you Exhibits S-72, S-73
24 and S-74 and ask you to examine them if you would.

25 A. (Pause) Okay, would you like me to say what they
26 are?

27 Q. Yes, please.

28 A. State's Exhibit 73 is a rough sketch that was drawn
29 at the crime scene. It represents the northern, a northern

1 portion of the Tardy Furniture Store where three victims were
2 located. And this is, State's Exhibit 73 is what I did at
3 the scene. State's Exhibit 72 is a more polished sketch. It
4 contains the same information that is contained in State's
5 Exhibit 73, but it is just polished up a bit. It is made a
6 little bit more for presentation. State's Exhibit 72,
7 however, is still not to scale. This is still, it's a rough
8 sketch in the sense that it is not a to scale drawing. So if
9 you are to see State's Exhibit 72, it is not exactly as it
10 appeared. The pictures represent what it looked like much
11 more accurately than this sketch. Finally, State's Exhibit
12 74 is a transparency that looked, contains a reduced
13 photocopy of the polished sketch of the furniture store,
14 and all of these represent the same area in the furniture
15 store.

16 Q. And were these diagrams prepared by you to help you
17 in recalling what you saw at the scene?

18 A. These were actually prepared by Jodi Creel, which
19 is the person that assisted me at the crime scene.

20 Q. And do they truly and accurately depict what you
21 saw at the crime scene?

22 A. Yes, they do.

23 BY MR. EVANS: Your Honor, I offer these three
24 exhibits into evidence.

25 BY THE WITNESS: With the exception of not
26 being to scale.

27 BY MR. LUMUMBA: Our objection is merely to
28 the inclusion of persons in it which are connected
29 in our view to other cases, the objection we made--

1 **BY THE COURT:** --yes, sir, okay. That
2 objection is overruled, and I will allow them to be
3 admitted.

4 ("POLISHED" SKETCH OF STORE OFFICE AREA BY
5 SCHOENE PREVIOUSLY MARKED AS STATE'S EXHIBIT S-72
6 FOR IDENTIFICATION, SKETCH OF STORE AREA PREVIOUSLY
7 MARKED AS STATE'S EXHIBIT S-73 FOR IDENTIFICATION,
8 AND OVERLAY OF STORE OFFICE AREA PREVIOUSLY MARKED
9 AS STATE'S EXHIBIT S-74 FOR IDENTIFICATION WERE NOW
10 RECEIVED IN EVIDENCE.)

11 **BY THE COURT:** Now my list is a little
12 different as to the way it's described.

13 **BY THE COURT REPORTER:** I will change it.

14 **BY THE COURT:** Okay. What are the numbers of
15 the ones I have just admitted?

16 **BY MR. EVANS:** 73. That is rough sketch of
17 the area if you would like to mark it.

18 **BY THE COURT:** Let me see it.

19 **BY MR. EVANS:** 74 is kind of a cleaned up
20 sketch, a little neater-- I'm sorry, 72.

21 **BY THE COURT:** Okay.

22 **BY MR. EVANS:** And 74 is the overlay.

23 **BY THE COURT:** All right.

24 **BY MR. EVANS:**

25 Q. Ms. Schoene, in addition to photographing other
26 parts, I want to hand you-- well, these haven't been marked
27 yet either.

28 **BY MR. EVANS:** I would like to have these four
29 photographs marked for identification.

1 (FOUR PHOTOGRAPHS OF SHOE TRACKS WERE MARKED
2 AS STATE'S EXHIBITS S-93 THROUGH S-96 FOR
3 IDENTIFICATION.)

4 BY MR. EVANS:

5 Q. Ms. Schoene, I will hand you Exhibits 93, 94, 95
6 and 96, and ask you to examine these if you would, please.

7 A. (Pause) Yes, sir. I recognize Exhibits 93, 94, 95
8 and 96.

9 Q. Can you tell us what those exhibits are?

10 A. Yes, sir. These are enlargements of black and
11 white photographs that I made of the crime scene of some
12 partial footwear impressions that were at the top of a ramp,
13 and this ramp joined the northern half of the store with the
14 southern half of the store. These were in close proximity to
15 two of the bodies that were at the crime scene.

16 Q. What was the significance of those photographs?

17 A. Well, I photographed these because they appeared to
18 have been made in blood, and they were made, they were in
19 close proximity, as I said, to some of the physical evidence
20 that I collected as well as victims' bodies. As far as
21 significance, I'm not quite sure what you mean other than it
22 was evidence, and my job there was to collect and document
23 evidence. And I consider this to be evidence, so I
24 documented it.

25 Q. And these four exhibits, do they truly and
26 accurately depict the shoe wear impression in the blood that
27 you made copies of that day by photographs?

28 A. Yes, sir. They do.

29 BY MR. EVANS: Your Honor, I offer these four

1 exhibits into evidence.

2 BY MR. LUMUMBA: I have no objection to the
3 exhibits, Your Honor.

4 BY THE COURT: Let them be marked. That is
5 93, 94, 95, and 96?

6 BY MR. EVANS: Yes, sir.

7 (PHOTOGRAPHS OF SHOE PRINTS PREVIOUSLY MARKED
8 AS STATE'S EXHIBITS S-93, S-94, S-95 AND S-96 FOR
9 IDENTIFICATION WERE NOW RECEIVED IN EVIDENCE.)

10 BY MR. EVANS:

11 Q. All right, Ms. Schoene, now that we have gotten
12 that out of the way, if you would, describe first before we
13 show the overlay generally what you saw in the store when you
14 went in.

15 A. As I said previously, the furniture store was
16 divided roughly into two halves, and I entered on the top
17 half which would be the northern half. I walked into the
18 store, and about midway, close to the back of the store there
19 was some crime scene tape, and on the other side of the crime
20 scene tape I observed three victims on the floor. And they
21 are all lying in pools of blood and a fourth pool of blood
22 that was there. There were some casings that were around
23 that area as well as these partial footwear impressions that
24 we just had admitted. And after searching around on the
25 floor for some other physical evidence, I also found some
26 projectiles and other pieces of metal fragments.

27 Q. All right, as part of your crime scene
28 investigation, is it necessary to talk with the first
29 officers on the scene to determine also what they observed?

1 A. Yes, most definitely. That's the way that we, when
2 we come to assist an agency with documenting and collecting
3 physical evidence, that's how we find out what they know so
4 far, so we will know where, how to begin collecting our
5 evidence for the most part and what they know and what they
6 might need to find out and that type thing. But yes, sir, we
7 do obtain a general history of the aspects concerning the
8 crime up until we, up until the time that we arrived.

9 BY MR. EVANS: Your Honor, may I set up a
10 screen so I can show the overlay first?

11 BY THE COURT: Uh-hum.

12 BY MR. EVANS: I'm not sure how far this one
13 needs to be away.

14 BY MR. LUMUMBA: Can I do this, Judge? Can I
15 sit here?

16 BY THE COURT: Sure. As long as, just don't
17 block the jurors' view. Can you see from that
18 chair right there?

19 BY MR. LUMUMBA: Yeah.

20 BY THE COURT: Okay.

21 BY MR. EVANS: Your Honor, may I have the
22 witness step down?

23 BY THE COURT: Yes.

24 (Witness steps down to side of sketch
25 projected on the screen on opposite side of the
26 courtroom from the jury box.)

27 BY MR. EVANS:

28 Q. Ms. Schoene, I have Exhibit 74 that I am showing on
29 the screen. If you would, I would like you to take this

1 pointer, and if you will -- is it working?

2 A. Barely.

3 Q. Let me see.

4 A. Okay.

5 Q. You may have to push the button kind of hard.

6 A. I am pushing pretty darn hard, okay.

7 Q. All right, if you would describe first to the
8 ladies and gentlemen of the jury, what that diagram shows.

9 A. This is a diagram, as I mentioned earlier, of the
10 northwest room of the Tardy Furniture Store in Winona. The
11 front of the store is this direction; the back of the store
12 is this direction. There is a counter that you see here that
13 was about in the middle of the store. Around this counter
14 was a victim in a pool of blood, another victim in a pool of
15 blood, a pool of blood, and another victim in a pool of
16 blood. This victim was closer to the back of the store
17 whereas these two victims and pools of blood were in the,
18 closer concentrated around the counter area. Also around
19 this area as you see, there is a great deal of furniture -
20 chairs, beds, cushions, sofas, that type thing. And it
21 looked like a furniture store on the inside. This is the
22 slope that I mentioned, this down slope, and the footwear,
23 partial footwear impressions that we briefly talked about are
24 located right here. They are labeled A, B, and C. A is
25 labeled closest to the front of the store, and C is closest
26 to the this pool of blood.

27 Q. All right, other than that, I notice that there are
28 other numbers on your diagram. What do they signify?

29 A. Okay, well, each--

1 Q. --the numbers 1, 2, 3.

2 A. Right. There are some-- the numbers themselves
3 represent evidence that I collected and their location or
4 again, their approximate location as you see them on this
5 rough sketch or polished sketch. But again, please bear in
6 mind that this is not to scale, and I think that the
7 photographs will help you interpret more correctly what it
8 looked like to me when I was there. These things, as I
9 mentioned, these are the partial footwear impressions. 1A is
10 a cartridge, a live round that I collected from this
11 location, and for those of you not familiar with firearms or
12 projectiles, a cartridge or a live round is a casing with a
13 projectile inside of it. Okay, so this is a cartridge which
14 is a casing with a projectile, an unfired round or live round
15 was collected here. 1, 2, 3, 4 and 5 represent the locations
16 of casings that I collected, and a casing is the empty part
17 of the cartridge for the most part. It is after the bullet
18 has been fired, and it's what is left behind. It's a
19 casing.

20 Okay, next I collected two projectiles and two
21 fragments, two metal fragments. The projectiles are labeled
22 1B and 2B, and the fragments are labeled 1C and 2C. And a
23 fragment is just a very small piece of metal, and a
24 projectile is something that you would probably-- it
25 resembles a bullet. It's a deformed bullet. It doesn't have
26 to be, but in this case it was.

27 Q. All right, now of the bodies that are shown on
28 there, where was Ms. Tardy located, Ms. Bertha Tardy?

29 A. Ms. Tardy was victim number three, and she was here

1 in the back of the store.

2 Q. Okay, how about Robert Golden?

3 A. Mr. Robert Golden was lying here in front of the
4 counter with his back up against the counter, right here.

5 Q. Carmen Rigby?

6 A. Ms. Carmen Rigby was located here. She was victim
7 number two.

8 Q. And--

9 A. --She was fairly close proximity to this slope and
10 to this pool of blood.

11 Q. Were you able to determine from your investigation
12 of the scene where Derrick Stewart was located?

13 A. I was able to determine from my examination of the
14 scene that another victim was here in this area where this
15 blood was located. There was a large pool of blood here and
16 also a baseball cap.

17 Q. All of the physical exhibits that you have
18 described as far as the live rounds, the hulls that you
19 found, and the projectiles and fragments of projectiles that
20 you recovered, did you document all of those and recover
21 them?

22 A. Yes, sir. Everything that you see on this sketch I
23 collected and submitted to the Crime Laboratory for
24 examination.

25 Q. All right. If you would, go ahead and have a seat
26 for a minute, please.

27 Q. All right, Ms. Schoene, the actual physical
28 exhibits that you recovered, I would like to hand you these
29 exhibits and ask you to look at them if you would. Take them

1 one at a time, call out the number of the exhibit and what
2 that exhibit is, and let me see if I can get them in order
3 here. (Pause.) All right, Exhibit 75, 77, 78, 79, 80, 81,
4 82, 83, 84 and 85. If you would, starting with the first
5 exhibit, tell us what those exhibits are?

6 A. (Pause while witness looks at exhibits.) Would you
7 like me to give this in the order of the State's Exhibit, the
8 order that you have them lined up?

9 Q. Whichever would be easier to you. It really
10 doesn't matter if it's in that order or not.

11 A. Okay. State's Exhibit 77 is a white pill box
12 labeled projectile collected from-- it's difficult to read
13 the box. There is a lot of tape placed over them.
14 Projectile collected from area northeast of Robert Golden,
15 and it's projectile 1B if you recall from the sketch. 1B.
16 This contains the projectile that was labeled on the sketch
17 as 1B. That is Mississippi Crime Laboratory exhibit number
18 31.

19 Q. All right.

20 A. State's Exhibit 78 is Mississippi Crime Laboratory
21 case number, exhibit number 32, and it is a white pill box
22 labeled projectile collected from underneath love seat next
23 to south side of counter, projectile 2B. So if you recall
24 from the sketch, projectile 2B that was labeled in the sketch
25 is what is contained within this box.

26 State's Exhibit 79 is Mississippi Crime Laboratory
27 case number, exhibit number 33. It is a fragment collected
28 from the area near the head of Carmen Rigby, and it's labeled
29 as fragment 1C.

1 State's Exhibit 80 is Mississippi Crime Laboratory
2 case number, exhibit number 25. It is a casing collected
3 from near Robert Golden, and it is casing number 1.

4 State's Exhibit number 81 is Mississippi Crime
5 Laboratory exhibit number 26. It is casing collected from
6 near Robert Golden. This is casing number 2.

7 State's Exhibit number 82 is Crime Laboratory
8 exhibit number 27. It is casing collected from near Carmen
9 Rigby which was the victim lying in front of the counter.
10 This is casing number 3.

11 State's Exhibit number 83 is Crime Laboratory
12 exhibit number 28. It is casing collected from area between
13 Carmen Rigby and Bertha Tardy. This box contains casing
14 number 4.

15 State's Exhibit number 84 is Crime Laboratory
16 exhibit number 29, and it is a casing collected from near
17 Bertha Tardy which is the victim that is closest to the back
18 of the store. This is casing number 5.

19 And State's Exhibit number 85 is Crime Laboratory
20 exhibit number 30, and it is the cartridge collected from
21 near Carmen Rigby.

22 Q. And what exhibit was number was that as far as your
23 exhibit in the diagram?

24 A. The cartridge. The final State's Exhibit number 85
25 is the cartridge that is collected near Carmen Rigby, and I
26 believe that was 1A in the sketch.

27 Q. Do all of these projectiles and cases and the
28 cartridge, are they in the same condition now as they were in
29 at the time that you recovered them?

1 A. The boxes are the same, and the boxes are in the
2 same condition, yes, sir.

3 Q. These boxes were what you sealed them in when you
4 sent them to the State Crime Lab; is that correct?

5 A. Yes, sir. I labeled these boxes and put the date
6 on them and initialed them myself and sealed them. Yes, sir.

7 BY MR. EVANS: Your Honor, I would offer
8 Exhibits 77 through 85 into evidence.

9 (Pause while Defense Counsel confer.)

10 BY MR. LUMUMBA: The only objection were the
11 ones raised before the trial.

12 BY THE COURT: All right. That objection is
13 overruled. Let them be marked. While she is
14 marking that, can I see y'all up here just a
15 second.

16 BY THE COURT REPORTER: Do you want it on the
17 record?

18 BY THE COURT: No, this is administrative
19 stuff.

20 (BENCH CONFERENCE OFF THE RECORD.)

21 (NINE WHITE PILL BOXES CONTAINING PROJECTILES
22 THAT WERE PREVIOUSLY MARKED AS STATE'S EXHIBITS
23 S-77 THROUGH S-85 FOR IDENTIFICATION WERE NOW
24 RECEIVED IN EVIDENCE.)

25 BY THE COURT: Ladies and gentlemen, we are
26 going to take a break right now for about 15
27 minutes. We have been going a pretty long time
28 this morning. I'm going to feed you in different
29 places while you are here. Sometimes you are going

1 to go to restaurants. Sometimes we will eat here.
2 If it will move things along a little bit better,
3 some days we may each eat here at lunch. This is
4 going to be one of those days we eat here at
5 lunch. The bailiffs are going to have-- they have
6 got menus for you. We need about an hour lead time
7 for the food to get prepared and bring here, so I'm
8 going to give you a break for about 15 minutes.
9 Now you can go to the jury room, tell them what you
10 want, and they will get it ordered. Then when it
11 gets here probably about 12:30, we will take a
12 break at that time for the lunch break. Okay, take
13 about 15 minutes.

14 BY THE BAILIFF: Remain seated, please.

15 (JURY LEFT THE COURTROOM.)

16 BY THE COURT: Okay. Everybody can have a
17 break.

18 (FOLLOWING THE MORNING RECESS ON MARCH 24,
19 1999, THE TRIAL CONTINUED IN OPEN COURT WITH THE
20 COURT AND ALL COUNSEL PRESENT AND WITH MS. MELISSA
21 SCHOENE STILL ON THE STAND:)

22 BY THE COURT: You may bring the jury back.

23 BY MR. LUMUMBA: What situation are we--

24 BY THE COURT: The jury is coming back.

25 BY MR. LUMUMBA: We have an issue we need to
26 talk to you about whenever.

27 BY THE COURT: Huh?

28 BY MR. LUMUMBA: We have an issue that we need
29 to talk about at the first opportunity.

1 **BY THE COURT:** Okay. How about when we break
2 for lunch? Will that be all right?

3 BY MR. LUMUMBA: There is something--

4 (JURY ENTERS THE COURTROOM.)

5 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
6 THE JURY AS FOLLOWS:)

7 BY MR. LUMUMBA: The lab person who said she
8 had to go out of town, Haller.

9 BY MR. EVANS: Betty Haller?

10 BY MR. LUMUMBA: Yeah. She is here. She is
11 real short. I think all she did was the DNA
12 analysis of the scraping of the--

13 BY MR. HORAN: --If y'all want to introduce
14 the report, you can introduce the report. We are
15 not going to put her on.

16 BY MR. LUMUMBA: No, no. I was going to put
17 her on out of order. That's what you told me
18 because she is supposed to be leaving. Do you know
19 what I'm saying?

20 BY MR. HORAN: Why don't you just introduce
21 the report.

22 BY MR. LUMUMBA: I will look at that.

23 **BY THE COURT:** Okay. All right.

24 BY MR. LUMUMBA: I will look at that. If that
25 is satisfactory.

26 END BENCH CONFERENCE.

27 BY MR. EVANS: May I proceed, Your Honor?

28 **BY THE COURT:** Yes, sir.

29 BY MR. EVANS: May I have the witness step

1 down again?

2 BY THE COURT: Sure.

3 BY MR. EVANS: Well, we are waiting on one
4 person, Your Honor.

5 BY THE COURT: Oh, I'm sorry. We need the
6 Defendant.

7 BY MR. EVANS: You can have a seat up there
8 for just a second.

9 (Defendant enters the courtroom.)

10 BY THE COURT: All right.

11 CONTINUED DIRECT EXAMINATION BY MR. EVANS:

12 Q. Ms. Haller [sic], first can you see the diagram on
13 the screen up there from where you are, or do you need to
14 step down?

15 A. I can see it fine.

16 Q. All right, I want to hand you again Exhibits 93,
17 94, 95, and 96, the shoe impressions that you took
18 photographs of?

19 A. Yes, sir.

20 Q. I'm going to try to get to where I am out of the
21 way of the jury. Can you point out on that diagram with your
22 pointer where those shoe impressions that were recovered in
23 blood were found?

24 A. Would you like for me to present to the jury the
25 pictures and then show them the location?

26 Q. Yes, if you don't mind. If you would like to, you
27 can step down to do that.

28 A. Okay.

29 (Witness steps down closer to screen.)

1 A. As I mentioned earlier, this area right here just
2 above where this slope is there was three partial footwear
3 impressions that appeared to be in blood, and I photographed
4 these. I labeled these partial impressions A, B and C. And
5 what I have here are the black and white enlargements of the
6 photographs that I took of the impressions in this area.

7 Q. And Ms. Haller [sic], just to simplify it, what you
8 are talking about is where somebody walked in some blood and
9 left their track; is that right?

10 A. Yes, sir. That's what it appears.

11 Q. Okay, if you would continue?

12 A. This is an enlargement of a black and white
13 photograph that is labeled "A." As you can see with the
14 north direction, and if you look at the sketch here, there is
15 the northern direction. So "A" corresponds to this "A" in
16 this direction. Okay, this is the impression that was the
17 lightest of the three, and when I say lightest, I mean it was
18 the least heavy. There was a progression somewhat of the-- a
19 thick impression, a little bit less, and then a thinner
20 impression of the substance that was making the impression.
21 There was less of it on "A," and this is "A." And this is
22 State's Exhibit, is that 93?

23 Q. Right.

24 A. State's Exhibit 93. Okay, State's Exhibit 94 and
25 95 are enlargements of black and white photographs that I
26 made of impression "B." This is impression "B." And these
27 are, it's the same impression there, and again you see the
28 northern direction so they were like this. It's the same
29 impression, but there is two different photographs of it. I

1 took several photographs of each impression using black and
2 white film with an oblique light source that I altered
3 slightly for each photograph. And this is a technique that
4 we use to enhance footwear impressions so the footwear
5 examiner apparently liked these two photographs and felt that
6 he needed two of them. So he chose two of them and had these
7 two enlarged, so these two represent "B."

8 BY MR. EVANS: All right. Your Honor, may I
9 pass those two to the jury as she proceeds?

10 BY THE COURT: They have been admitted,
11 haven't they?

12 BY MR. EVANS: Yes, sir.

13 BY THE COURT: Yes, sir. You can pass them.

14 (State's Exhibits S-94 and S-95 were passed to
15 the jury.)

16 BY THE WITNESS:

17 A. This is the final black and white enlargement.
18 This is, as you can see, it's labeled "C" in the northern
19 direction, so it's situated like this, and it is represented
20 here. And as I mentioned earlier, this is the heaviest of
21 the impressions, and you will see this if you're allowed to
22 pass it around. This does look a little bit thicker than
23 both of the B or the A. And this is State's Exhibit 96, and
24 it does accurately represent the partial footwear impression
25 that I depicted in this sketch labeled "C."

26 Q. And very briefly, now that you have introduced the
27 projectiles, the fragments, the hulls, and the live round
28 that you recovered, without actually taking each one and
29 doing it, would you point out on the diagram with your

1 pointer where those items were recovered and what was
2 recovered from which area?

3 A. Yes, sir.

4 Q. Do you need your notes to do it?

5 A. No, sir. I don't believe so. I may refer to
6 them. Okay, I have just discussed the partial footwear
7 impressions, A, B and C. And as you can see, they are
8 located here, about at the top of the slope very near victim
9 number two, Bertha Tardy. 1A in the sketch represents the
10 live round or the cartridge that I collected, and the single
11 numbers 1, 2, 3, 4 and 5 back here near the back, again those
12 represent the casings. And if you remember, the casing is
13 the empty, it's what is left after a bullet is fired. It's
14 just a hull. It's a shell. That is a casing. So those 1,
15 2, 3, 4 and 5 are casings.

16 Q. Ms. Schoene, let me stop you right there for a
17 minute. On the casings that you found, what caliber were
18 those casings?

19 A. The head stamp on the casing read .380.

20 Q. And were all of these casings the same caliber?

21 A. Yes, sir. They were all .380's.

22 Q. All right. Go ahead and proceed with your diagram
23 if you would.

24 A. Okay, the next two types of evidence that I
25 collected were projectiles and then fragments which is pieces
26 of projectiles or pieces of metal. The projectiles are
27 labeled 1B, 1B and 2B. Right here are the two projectiles or
28 the bullets, okay, that have come out of a casing. And
29 finally, the other bits of evidence that I collected are

1 fragments, and it would be 1C and 2C, and they are located
2 here underneath this love seat and here in this pool of
3 blood.

4 Q. And the hulls to start with, who at the Crime Lab
5 did you submit those to for any comparisons?

6 A. Those casings were examined by Steve Byrd, our
7 firearms examiner at the Crime Laboratory.

8 Q. And did he also receive the projectiles and the
9 fragments of projectiles that you recovered?

10 A. Yes, sir; he did.

11 Q. Okay. If you would, I would like for you to try to
12 stand where you are. We may need to get you to move, but I
13 want to show some slides and get you to explain what they
14 show.

15 BY MR. EVANS: Your Honor, may we have the
16 bailiff cut the lights? I think it is just one up
17 in this part will probably be enough.

18 BY THE COURT: Yeah, that will work.

19 (Part of the lights were turned off in the
20 courtroom, and the slide projector was turned on.)

21 BY MR. EVANS:

22 Q. Ms. Schoene, I show you Exhibit S-1 first and ask
23 you if you can identify what this exhibit is?

24 A. Yes, sir. This is the photograph of the parking
25 lot outside of Tardy Furniture Store.

26 Q. And have you got your pointer with you?

27 A. Yes.

28 Q. If you would, point out where the, approximately
29 where the front door of Tardy Furniture is located?

1 A. This area.

2 Q. All right.

3 A. This is again the exterior, the outside of Tardy
4 Furniture Store. This is just taken at a slightly different
5 angle. Again this is Tardy Furniture Store right here.

6 Q. And for the record that is Exhibit S-2. I will
7 next show you Exhibit S-3.

8 A. Okay, again this is the outside of Tardy Furniture
9 Store just simply taken from another angle. I am standing
10 farther away and taking a shot at the front of the store.

11 Q. And is this the same front door that you have
12 described in Exhibit S-1?

13 A. Yes, sir. This one is.

14 Q. The next exhibit I will show you will be Exhibit
15 S-8. I am getting to it. I have got them in order.

16 A. Okay, this is a photograph that I took of one of
17 the back doors of Tardy Furniture Store with the piece of
18 wood bolted in place. That's how it appeared upon my
19 arrival.

20 Q. All right, and while we are at this slide, would
21 you explain to the ladies and gentlemen of the jury why it
22 was necessary for you to look at all of the doors and
23 document what condition they were in?

24 A. It's general scene documentation. I photograph the
25 entries and exit ways, and this was just one of the
26 photographs of the two back doors. And this shows that it
27 was in the closed and locked position.

28 Q. All right, the next photograph is Exhibit S-9. Can
29 you tell us what this photograph shows?

1 (Slide Exhibit S-9A was shown on the screen.)

2 A. Yes, sir. I am taking this picture standing near
3 the back of the furniture store looking out toward the front,
4 and we have talked about this counter here. This is where
5 the body of Robert Golden and Carmen Rigby are just on the
6 other side of this, as is the third or the fourth pool of
7 blood, and the baseball cap is just to the other side of this
8 counter. And that is, this is an excellent overall
9 representation of what was in the store, all the furniture,
10 the fabric, the cushions and that type thing that is-- you
11 just see a lot of furniture. That is what the store looked
12 like.

13 Q. All right, and the lighter area in the center, is
14 that the front window of the store?

15 A. This area here is the front.

16 Q. Okay, the next Exhibit is S-10. Can you tell us
17 what this exhibit is?

18 A. Yes, sir. This is another angle of that counter.
19 What I have done is move from the back of the store up
20 towards the counter, and I am taking a picture of this to
21 document the counter, the contents and what it looked like
22 when I arrived. We have a purse here in the middle. We have
23 a money drawer here, a chair, another chair, just and filing
24 cabinets and papers. And again, this is the same counter.
25 You may be able to see this area right here. This is the
26 walkway that goes into that second half of the store, okay,
27 where the ramp up is where the footwear impressions were
28 located. That's a good reference for you to see with
29 reference to the proximity of the counter and that breeze-

1 way right there or walkway.

2 Q. The next exhibit is S-11.

3 A. Okay, this is a close-up photograph of the purse
4 that I had just pointed out in the previous slide. This
5 purse contained identification for Carmen Rigby, and it was
6 found at-- this is the way it appeared upon our arrival in
7 the middle, kind of behind the counter on the floor.

8 Q. Did you find or recover any money in that purse?

9 A. Yes, sir. There was \$10.00 in that purse as well
10 as credit cards and some keys.

11 Q. And what was the condition of the purse? Was it in
12 the middle of the floor opened like that when you first saw
13 it?

14 A. Yes, sir; it was.

15 Q. The next exhibit is S-12.

16 A. Okay. I would like-- this is the money drawer that
17 is behind the counter, okay, and again the bodies of two of
18 the victims are just on the other side of this as is the pool
19 of blood is on the other side of this counter. I would like
20 to point out now though while y'all are looking at this
21 picture. This is not the way it appeared upon my arrival.
22 This photograph shows the money drawer open. Okay, and this
23 was taken to document what was in the money drawer, but upon
24 my arrival, this is not the way it looked. So I don't want
25 to mislead anyone into thinking that. But this was taken to
26 document what was inside of the money drawer.

27 Q. Okay, now I notice while we are on this photograph,
28 I noticed a dark substance on top of the counter top. Can
29 you describe what that is?

1 A. Yes, sir. That is fingerprint powder. Right, I
2 dusted the areas around the victims and the counter area with
3 fingerprint powder to, in an attempt to raise any latent
4 prints that may be there. And so that is what you see is the
5 residue from the latent print powder.

6 Q. All right, and before I get into anything in that,
7 I will ask you just from your observation of the crime scene,
8 what were your expectations as to being able to recover any
9 prints?

10 A. I am always, I always like to be optimistic about
11 the opportunity to recover prints. However, in a scene such
12 as this where the vast amount of the objects inside of the
13 store are furniture, it is not easy to leave a fingerprint or
14 a finger impression on a cloth substance. Typically, we do
15 leave fingerprints. All of us leave fingerprints on
16 non-porous surfaces like glass and plastic, shiny polished
17 surfaces. And we leave this residue because there is
18 moisture that we are always secreting from our fingers and
19 also small amounts of oil. So I am sure sometimes you all
20 have noticed when you pick up a glass, you see your own
21 fingerprints.

22 Well, we look for, we call those latent prints;
23 latent just meaning hidden because you can't see them. You
24 don't just walk up and see fingerprints on maybe this rail or
25 something like that. So we have to try to enhance those
26 latent prints and try to make the prints appear. The way we
27 do that is to use black powder in a fiberglass brush and dust
28 all of the areas that are capable of retaining fingerprints.
29 Okay, and this counter was an okay surface for latent

1 prints. But as I said, unfortunately, a lot of the cloth in
2 the store and the cloth in the pillows and such as that, it's
3 not very good media for receiving and recovering latent
4 prints.

5 Q. All right, when you were dusting, were you able to
6 find any prints of any type while you were dusting?

7 A. Yes, sir. Yes, sir, I did recover I believe five
8 cards of, five different cards of latent prints. And what
9 that means is we will dust, and if we do bring up ridge
10 detail, little ridges that you see on your fingers, what we
11 do then; okay, we visualize it so we take a piece of tape and
12 put the tape over the finger impression or what could be a
13 finger impression, lift it and put it on a white card. And
14 because we dust with black powder, we put it on a white
15 card. That enables fingerprint experts to look at those and
16 make comparisons between latent prints that we lift at crime
17 scenes and known inked cards of suspects.

18 Q. All right, do fingerprints, like if I touch this
19 counter, can that fingerprint possibly be there for a long
20 period of time?

21 A. Yes, sir. Yes, sir. There is no, there is several
22 different conditions that determine how long a fingerprint
23 will stay around. If it's on a good surface and it is kept
24 out of environmental conditions and it is not purposely wiped
25 away, it can last several years.

26 Q. All right, and in a public business like this, do
27 you expect to find numerous prints from all types of people?

28 A. I would expect so. However, given the fact that
29 the majority of these rooms were filled with furniture and

1 unfortunately, wood is not an excellent source, and there is
2 a lot of wood in there too, it's just not the optimum room to
3 collect latent prints from.

4 Q. All right, and how about the condition of the
5 safe? Was it the type of surface that you would normally
6 expect to find prints on?

7 A. It is possible. I don't believe that you all have
8 seen the safe, but the safe that he is referring to is in
9 the back office, which I did dust for latent prints. It is
10 not a good surface to recover latent prints from, but I did
11 make the effort and tried to recover prints from that
12 surface.

13 Q. Okay. Do you know of any prints of the Defendant
14 that were found inside the store?

15 A. I have no firsthand knowledge of comparisons that
16 were done after I collected the evidence from the crime
17 scene.

18 Q. All right. The next exhibit that I will show you
19 is Exhibit 13 and ask you what this is?

20 A. Again, this is the money drawer that you had seen
21 in the earlier picture, and this is just from a slightly
22 different angle.

23 Q. And would you describe what that slide actually
24 shows as far as the different slots and what is present and
25 what is not present?

26 A. Yes, sir. This is located approximately in the
27 middle of that counter that you had seen. It's in the middle
28 of the store. In the front here is four bins for change, and
29 there was a lot of change present. Also, there is a key ring

1 here. There was, there were no money bills inside of this
2 cash box. As you can see, the money, the bill channels are
3 empty.

4 Q. All right. And is that the condition that that
5 drawer was in as far as the contents when you arrived at the
6 scene?

7 A. Yes, sir. That is what-- the contents are the
8 same. However, bear in mind this is not the condition. It
9 was not open like this.

10 Q. Okay. The next photograph is Exhibit 14.

11 A. Okay, this is a photograph of some of the contents
12 of the counter. We are still on the counter where the money
13 box is, and this is an empty money bag.

14 Q. Okay, and there was nothing in that money bag; is
15 that correct?

16 A. Right.

17 Q. The next exhibit is S-15?

18 A. Okay, this is the safe that Mr. Evans referred to
19 earlier. This is in the back office. This is, if you recall
20 from the sketch where Bertha Tardy's body was found, this is
21 further back than that. This is the very back of the store.
22 There was office space, and this is Bertha Tardy's office.
23 And this is the safe that was in the back corner of her
24 office. This is as it appeared when I arrived at the crime
25 scene. The safe door was shut, was closed, but it wasn't
26 locked.

27 Q. Exhibit 16?

28 A. Okay, this is that same safe but I have, I have
29 opened the door and photographed the inside just for

1 photographic documentation of what it appeared, what the
2 inside looked like when I was there.

3 Q. Did you have an occasion to look through that safe
4 to determine if there was any money left in it?

5 A. Yes, sir. I did go through the safe.

6 BY MR. LUMUMBA: Your Honor, objection, Judge.
7 That assumes that there was money in it at some
8 point in time. In other words, the question was
9 did he -- that is an objectionable question.

10 BY THE COURT: Rephrase your question.

11 BY MR. EVANS:

12 Q. Was there any money in the safe?

13 A. No, sir. There was no money in the safe.

14 Q. Thank you. Exhibit 17, can you tell us what this
15 shows?

16 A. Yes, sir. This is a photograph from a different
17 angle of the store. This is near the door that we walk in.
18 This back here is the door to Bertha Tardy's office.

19 Q. All right.

20 A. And over here is the counter that I keep referring
21 to which is where it seems that most of the activity occurred
22 here. And this is the body of Bertha Tardy. And this is the
23 shoe of Carmen Rigby that is off of her foot. And this area
24 right here is where the fourth pool of blood was located.

25 Q. Okay, can you-- I know you can't see it in that
26 photograph, but from that photograph can you tell us where
27 the safe was located?

28 A. Yes, sir. The safe was in Bertha Tardy's office
29 which again is through this back door right here, and if you

1 walk into the office and turn left, it's in that corner.

2 Q. Exhibit 18?

3 A. Okay, this is a photograph of Bertha Tardy.

4 Q. Exhibit 19?

5 A. This is another photograph of Bertha Tardy. She is
6 lying, she is the victim who was farthest back in the store,
7 and again, here is her office door.

8 Q. All right. Was there an exit door from behind that
9 office?

10 A. Not that I recall.

11 Q. Exhibit 20?

12 A. Okay, again this is victim Bertha Tardy from a
13 slightly different angle.

14 Q. Okay, did you observe any other physical evidence
15 around her such as her glasses?

16 A. Yes, sir. Her glasses were found underneath the
17 mattress, and there was a casing very near her also.

18 Q. All right, can you point out with your pointer
19 approximately the area that her glasses were found?

20 A. It's somewhat difficult with this photograph, but I
21 believe that they were under this mattress.

22 Q. All right, and where your pointer, approximately
23 where your pointer is, do you see the post to the left?

24 A. Yes, sir.

25 Q. Did you observe anything about that post?

26 A. Yes, sir. There was some sort of defect to the
27 post.

28 Q. And by defect, did it appear to be some type of
29 hole in the surface of the post there?

1 A. A hole in the surface of the paint and part of the
2 brick was chipped away; yes, sir.

3 Q. Exhibit 21. Is this a close-up that shows the
4 glasses?

5 A. Yes, sir. This is a better photograph showing the
6 glasses. This is the glasses that were, that I collected--
7 well, that were from Mrs. Tardy, and here you can see the
8 casing that was collected. I believe it is labeled 5 in the
9 sketch. I don't recall, but there was a circle near Bertha
10 Tardy's body, and this is the casing.

11 Q. And by casing, again to make sure we understand,
12 you are talking about the hull that would have been ejected
13 after a bullet was fired?

14 A. That is exactly right. The bullet comes out of the
15 barrel, and the casing stays behind. It can be ejected, or
16 it can stay in the cylinder.

17 Q. Exhibit 22?

18 A. Okay, this is a close-up photograph of Bertha
19 Tardy.

20 Q. Okay. Were you able to determine where any wounds
21 were on Bertha Tardy?

22 A. Yes, sir. She had some defects to her head.

23 Q. And can you remember what part of the head that
24 was?

25 A. If I may refer to my notes?

26 Q. Okay.

27 A. (Pause) Yes, sir. My documentation for Bertha
28 Tardy is that she was lying face down, head toward the west,
29 face facing north in a pool of blood around her head and

1 shoulders. Her right arm is extended outward and bent at the
2 elbow downward. Her left arm is underneath her body. There
3 was a defect over her left eye, a defect behind her right
4 ear.

5 Q. Okay. The next photograph is Exhibit 23.

6 A. Okay, this photograph has a lot of information in
7 it. This is the slope that I have referred to several times
8 with the partial footwear impressions in this area. This is
9 the foot of victim Carmen Rigby, and this is the pool of
10 blood with the baseball cap. And several of the casings were
11 collected from this area.

12 Q. All right. And the pool of blood with the baseball
13 cap, is that where the fourth victim had been before he was
14 removed?

15 A. Yes, sir.

16 Q. That would have been BoBo Stewart as far as your
17 information; is that correct?

18 BY MR. LUMUMBA: Objection. I think it is,
19 that would have to be hearsay.

20 BY THE COURT: That is overruled.

21 BY MR. EVANS:

22 Q. Okay. And the shoe that you have pointed out, who
23 did that belong to?

24 A. That shoe belonged to Carmen Rigby.

25 Q. Okay, I notice a foot and a shoe, and that is
26 Carmen Rigby's other foot and shoe in that picture. Is that
27 correct?

28 A. Yes, sir.

29 Q. All right. Can you see on there where the live

1 round was recovered?

2 A. Yes, sir. I can because I know where it is, but I
3 believe it would be difficult for the jury to see. The live
4 round was very close to this sandal, that live round. The
5 cartridge that has the bullet and the casing together was
6 right in this area.

7 Q. Okay, and the area where the shoe impressions were
8 taken, who pointed those areas out to you?

9 A. The Chief of the Winona Police Department upon my
10 arrival, Johnny Hargrove.

11 Q. Okay. And do you know at the point that that was
12 turned over to you, who was securing that area?

13 A. Johnny Hargrove was there when I arrived. I was
14 called to, for-- the request came in for our assistance from
15 the Winona Police Department and the Mississippi Highway
16 Safety Patrol, their Criminal Investigation Bureau,
17 Investigator Jack Matthews.

18 Q. The next exhibit is 24.

19 A. Okay, this is a photograph--

20 Q. --Wait just a minute. I think it passed one.

21 (Pause while Counsel tried to find the right
22 slide.)

23 Q. Okay, I will come back to it in just a minute. I
24 don't know where that slide is. 24. Exhibit 25, can you
25 tell us what this is?

26 A. This is Exhibit 25?

27 Q. Right.

28 A. Okay, this is a photograph of victim Carmen Rigby.

29 Q. All right.

1 A. There are some keys here that were very close to
2 her hand, and there was a casing collected very near this
3 area also.

4 Q. Okay, and I noticed two separate pools of blood; is
5 that correct?

6 A. Yes, sir. There is a pool of blood underneath her,
7 and there is a pool of blood coming from the fourth, the
8 fourth area where there was blood but there was no victim.

9 Q. Okay, so the pool of blood in the front of that did
10 not come from her. It came from where the fourth victim had
11 been removed; is that correct?

12 A. I believe so; yes, sir.

13 Q. (Changes projector to the next slide.)

14 A. Okay, this is--

15 Q. This is Exhibit 26.

16 A. Okay. To orient you, this is the counter that I
17 keep referring to. This is victim Robert Golden. This is
18 the arm of Bertha-- excuse me, of Carmen Rigby. And just
19 beyond, just beyond Robert Golden is where the fourth pool of
20 blood was located, and again, just beyond that is where the
21 partial impressions are, and there is the downward slope.

22 Q. Okay.

23 A. And the front of the store is this way, and the
24 back of the store is this way where Bertha Tardy's body was
25 found and the office and the safe.

26 Q. Exhibit number 27.

27 A. Okay, this is a photograph of victim Robert Golden
28 lying up against the counter.

29 Q. Okay, was there any other evidence recovered around

1 his body?

2 A. Yes, sir. There was a projectile collected from
3 over here, and I believe two casings collected from this
4 area.

5 Q. Okay, this is-- okay, this is going to be Exhibit
6 24. It was just out of order. Can you tell us what this
7 photograph shows?

8 A. Yes, sir. This is a good representation of what
9 was in the store. There is furniture here. Also, the
10 counter, victim Robert Golden, victim Carmen Rigby, and the
11 fourth pool of blood here with the baseball cap and what--
12 I'm actually standing on the ramp that I keep referring to,
13 so looking up and then the area where the partial footwear
14 impressions A, B and C were located are right here.

15 Q. Okay. The blood in that photograph by the cap of
16 the fourth victim, would you describe how that blood is up
17 next to the body of Carmen Rigby? What did you observe?

18 A. Carmen Rigby, there is that trail of blood is
19 seeping into Carmen Rigby's knee area. There is a trail that
20 leads somewhat to her knee. It is just a large pool of
21 blood, somewhat nondescript. It's just a very large pool of
22 blood.

23 Q. All right, the blood that is running toward her
24 knee, could you tell if that blood was under her or if it
25 just ran up to her knee?

26 A. It appeared that it ran up to her knee.

27 Q. Okay, it didn't appear that she was laying in a
28 pool of blood that was already there; is that correct?

29 A. That's correct.

1 Q. Exhibit number 29, can you tell us what this is?

2 A. Yes, sir. Exhibit number 29 is a photograph, and
3 there is actually, the next picture, I believe, is a better
4 photograph. But this is a distant shot of, if you see this
5 light spot here in the middle, that is a projectile that I
6 recovered, 1B. This is near the body of Robert Golden. This
7 was off to the side a little bit. The next picture, I
8 believe, will show a close-up of that, that might make some
9 sense to you.

10 Q. All right. Is that the end of the couch or chair
11 that we are looking at?

12 A. Yes, sir.

13 Q. I want to back back up to Exhibit 24. Well, I'm
14 going the wrong way. Can you see that couch in this
15 photograph?

16 A. (Witness points with pointer.) Not very clearly.

17 Q. Okay. The next photograph is Exhibit 30. What
18 does this exhibit show?

19 A. Yes, sir. This is the close-up of the photograph
20 that you have just seen. This is the projectile that I
21 recovered from very near the body of Robert Golden.

22 Q. This is Exhibit 31. What does it show?

23 A. Okay. Again, this is the ramp that I have
24 mentioned. I am standing at the bottom of the ramp taking
25 the photograph up toward the counter and the area where the
26 two victims and the pool of blood are. This is just to show
27 an overall, show the ceiling is very high. It's not a drop
28 ceiling. There is-- just to give you an overall idea of what
29 the store looked like, what was around it, what kind of

1 objects were there and its objects inside as they relate to
2 the victims.

3 Q. All right, and this ramp goes down into the part of
4 the store that is down on this side; is that correct?

5 A. Yes, sir. As I said earlier, the furniture store
6 is divided into two halves, and this ramp separates the two.

7 Q. All right, can you point out with your pointer on
8 that photograph the area that the shoe impressions were
9 recovered?

10 A. Yes, sir. The partial shoe impressions that I
11 photographed are in this area.

12 Q. Okay, and as far as which direction they appear to
13 be going as far as light-- dark to light, which direction do
14 they appear to be going in?

15 A. The darkest or the heaviest impression was closest
16 to the back of the store. So it tapered off as it moved
17 toward the door. So the darkest was closest to this pool of
18 blood, and the lightest would be closest to the front of the
19 store.

20 Q. And were the impressions from where you recovered
21 consistent with someone having stepped in the blood of
22 Derrick Stewart?

23 A. They were consistent with someone having stepped in
24 that pool of blood; yes, sir.

25 Q. The next exhibit is 38. Let me get to it. This is
26 not real clear in this light. Would you cut the other light
27 off for just a second. (NOTE: Another light in the courtroom
28 was cut off.) Can you describe what Exhibit 38 is?

29 A. Yes, sir. This is the photograph of the wall near

1 the body of Bertha Tardy, and this is the defect that I
2 described earlier.

3 Q. Okay, this is the same defect that was in the wall
4 beside her, basically beside where her glasses were
5 recovered. Is that correct?

6 A. Yes, sir. And the casing was in that general area
7 also.

8 Q. Okay. You can cut the light back on. Okay, thank
9 you. If you would, take your seat again for a minute.

10 BY MR. EVANS: One second, Your Honor.

11 (State's Counsel confer briefly.)

12 BY MR. EVANS:

13 Q. All right, Ms. Schoene, at the scene I know that
14 you had recovered this shoe impressions that you have
15 described several times in the photographs and also in the
16 diagram. Did you take any effort to try to determine if
17 those shoe impressions could have been made by anyone there
18 at the scene?

19 A. Yes, sir. I did.

20 Q. And what did you do?

21 A. I, they were pointed out to me upon my arrival, and
22 my first question was well, since there were EMT's, emergency
23 medical personnel here, I would like to see the shoes of the
24 emergency medical personnel. I did request that they come
25 back to the scene. I looked at their shoes. They were not
26 consistent with those partial impressions nor were anybody's
27 shoes that were at the scene.

28 Q. Okay. And the hole in the wall that you have
29 described and shown the jury in the diagrams, is that hole

1 consistent with having been struck by a bullet?

2 A. It could be; yes, sir.

3 BY MR. LUMUMBA: I'm sorry; I didn't get that
4 question.

5 BY MR. EVANS: Was the hole consistent with
6 having been struck by a bullet?

7 BY MR. EVANS:

8 Q. Okay, as far as the crime scene itself, I know you
9 have made a pretty thorough investigation of the scene as far
10 as what could be recovered there, what type of effort and how
11 far at that point did you go in actually trying to find
12 projectiles that may have passed through different
13 individuals or things like that?

14 A. At a scene such as this where there was multiple
15 victims with potentially multiple gunshot wounds, it is
16 unknown to us at the crime scene, those of us who are
17 collecting evidence, how many projectiles may still be inside
18 of a victim. So it is our practice to, when we respond to
19 requests for assistance such as this, we go and we collect
20 the fragile evidence, the evidence that is there. And then
21 we talk with the investigators after we finish, and we talk
22 through and we explain. This is what I collected; this is
23 where I collected it. This is where it came from. You may
24 want to think about this. You may want to look for this.

25 I recommended to the investigators prior to our
26 leaving Winona furniture store that they secure the store
27 until they can get the autopsy results back from each of the
28 victims to determine if there still may be some projectiles
29 left in the store.

1 Q. And were you asked not necessarily to do a crime
2 scene investigation, but to do any investigation of a
3 particular car?

4 A. Yes, sir. Investigator Wayne Miller with the
5 Mississippi Highway Patrol Criminal Investigations Bureau
6 asked me to please, when I finished up with the furniture
7 store, to dust-- there was a brown vehicle that was located
8 at the Winona Police Department-- to dust a specific area for
9 latent prints. And I did do that prior to going back to
10 Jackson.

11 Q. What area of the car were you asked to dust for
12 latent prints?

13 A. I was asked to dust for latent prints around the
14 glove box area and also on the passenger side window.

15 Q. Okay, as far as the area of the car that you saw,
16 what were your expectations of being able to recover any
17 prints off of those surfaces?

18 A. Typically even, typically if we have a request such
19 as that that is very specific and there are more surfaces
20 that look like they would allow prints to be lifted, we would
21 probably go ahead and take more impressions. That car was an
22 older model vehicle. It had rained that day. The exterior
23 of the car was still wet. The interior of the car had cloth
24 seats and if you-- or cloth upholstery covers, and if you
25 recall me explaining earlier, the likelihood of getting
26 latent prints off of cloth is not good. You are much more
27 likely to leave latent prints on hard non-porous surfaces
28 than cloth. So the cloth was not a viable option for
29 recovering latent prints.

1 Also, the dashboard on this car was damaged from
2 the sun. It was cracked and very dusty. So as you can
3 imagine, a dusty surface is not a very good surface to
4 recover latent prints from either.

5 Q. I would like to show you Exhibits 42 and 43 along
6 with the corresponding slides and ask you to examine those if
7 you would.

8 A. (Pause while witness complies.) Yes, sir. State's
9 Exhibit 42 does agree with the slide S-42A. And State's
10 Exhibit S-43 does agree with slide S-43A.

11 Q. And what do those photographs and slides show?

12 A. These photographs and slides show the car that I
13 processed that afternoon, that evening actually.

14 BY MR. EVANS: Your Honor, I offer these
15 exhibits into evidence.

16 BY THE COURT: Any objection?

17 BY MR. LUMUMBA: Oh, no, sir. If they are the
18 ones I think they are. Can I look at them real
19 quick?

20 BY MR. EVANS: Sure.

21 BY MR. LUMUMBA: What is the number?

22 BY MR. EVANS: 42 and 43.

23 BY MR. LUMUMBA: We have no objection.

24 BY THE COURT: Let them be marked and
25 admitted.

26 (PHOTOGRAPHS AND CORRESPONDING SLIDES
27 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-42, S-42A,
28 S-43, AND S-43A FOR IDENTIFICATION WERE NOW ALL
29 RECEIVED IN EVIDENCE.)

1 BY MR. EVANS: Your Honor, may I have this two
2 page document marked for identification?

3 BY THE COURT: Okay.

4 (KEY AND MEASUREMENTS FOR SKETCH BY MS.
5 SCHOENE WAS MARKED COLLECTIVELY AS STATE'S EXHIBIT
6 S-97 FOR IDENTIFICATION.)

7 BY MR. EVANS: Your Honor, if I may show
8 Defense Counsel which exhibit this is.

9 (Pause while Exhibit S-97 for identification
10 shown to Defense Counsel.)

11 BY MR. EVANS:

12 Q. Ms. Schoene, I will hand you Exhibit 97 for
13 identification and ask you if you can examine that exhibit?

14 A. Yes, sir. I recognize this exhibit.

15 Q. What is that exhibit?

16 A. State's Exhibit 97 is a photocopy of what I have
17 prepared, and the title of it is "Key and Measurements for
18 Sketch of Northwest Room of Tardy Furniture Company" in
19 Winona, Mississippi. It lists our Crime Laboratory case
20 number, and it is a list of measurements that I took at the
21 crime scene that go along with the sketch that you have
22 seen. It lists each item that I collected as well as a
23 documentation of the location of the victims.

24 Q. Do those measurements truly and accurately show
25 where those different items that you have recovered,
26 specifically, I think the projectiles, the casings?

27 A. Yes, sir. These accurately represent the
28 measurements that I took.

29 Q. Okay, and those go along with the diagram that has

1 already been introduced into evidence?

2 A. Yes, sir.

3 BY MR. EVANS: Your Honor, I offer Exhibit 97
4 into evidence.

5 BY MR. LUMUMBA: We have no objection.

6 BY THE COURT: Let it be marked.

7 (KEY FOR SKETCH PREVIOUSLY MARKED AS STATE'S
8 EXHIBIT S-97 FOR IDENTIFICATION WAS NOW RECEIVED IN
9 EVIDENCE.)

10 BY MR. EVANS:

11 Q. All right, Ms. Schoene, is there anything else that
12 I have not brought out that you did in your investigation
13 that the jury would need to know about?

14 A. (Pause while the witness consults her notes.)
15 Other than the idea or the fact that I go to these crime
16 scenes and I collect evidence and package them and bring them
17 back to the Crime Laboratory where they are submitted to
18 other examiners who examine them. I don't collect the
19 evidence and then turn around and examine it. I want to make
20 that clear. Other than that, no, sir.

21 Q. And all of this evidence you did turn over so that
22 it could be tested and compared by other experts at the State
23 Crime Lab; is that correct?

24 A. Yes, sir. I submitted all of the items that I
25 collected for evidence in this case on July the 16th, 1996,
26 at 8:15 PM.

27 BY MR. EVANS: Your Honor, I tender the
28 witness.

29 BY MR. LUMUMBA: May I proceed, Judge?

1 **BY THE COURT:** Yes, sir.

2 CROSS-EXAMINATION BY MR. LUMUMBA:

3 Q. Good afternoon, Ms. Schoene.

4 A. Thank you. Schoene, yes, sir.

5 Q. Ms. Schoene. Ms. Schoene, I have just a few
6 questions to ask you. I think that you have just, as I have
7 followed you, you have just explained to the ladies and
8 gentlemen of the jury what your function really is; is that
9 correct, in terms of gathering evidence at the crime scene?

10 A. Yes, sir, for-- yes, what I did for this case, that
11 is exactly right.

12 Q. Okay, and then I notice as you started out, you
13 said that you had been notified to come to the scene of what
14 was believed to be a homicide; is that correct?

15 A. I believe-- that's the way it is written in my
16 notes; yes, sir.

17 Q. I think that is how you testified that you were
18 notified. And in ways, and I notice that one of the things
19 you do as a professional, as an expert is you do not, you
20 make it very clear what you can say and what you cannot say.
21 Is that correct?

22 A. Yes, sir. I try to.

23 Q. Okay. And so for instance, so what you were
24 telling us is that you didn't know whether it was a homicide
25 scene or not until you got there, and then basically all you
26 could do when you got there was collect evidence to tell you
27 as much as you knew, as much that evidence would shed light
28 on. Is that correct?

29 A. Well, typically when we respond to requests for

1 assistance from smaller agencies in Mississippi, they don't
2 know a whole lot of information off the front end. When we
3 go out to these agencies and teach classes about evidence and
4 crime scenes, we say if you happen upon a crime scene that
5 may look too large for you or may, you don't want to even
6 start it, give us a call, and we will send out some forensic
7 scientists to collect the evidence. So typically, we don't
8 know a whole lot on the front end about the circumstances
9 that surround the crime. We get the basics - three,
10 possibly four victims and please come help collect evidence.
11 And if we can, we do.

12 Q. And that's what happened in this case?

13 A. Yes, sir.

14 Q. Okay, and maybe this is just a bit too simple, but
15 what I am saying is that basically you obviously are not a
16 person who was present at the time that anything happened at
17 this store; is that correct?

18 A. No, sir. I was not present when anything happened
19 at the store.

20 Q. And so basically, what you are trying to do is get
21 information that will tell people as much as possible; is
22 that correct? In other words, information once examined by
23 the appropriate people will be evidence that will speak to
24 the question perhaps who was in the store. That is one of
25 the things you might want to know; is that correct?

26 A. Yes, sir. I collect evidence and submit it to the
27 Crime Laboratory, and the other forensic scientists analyze
28 it and issue reports back to the investigators who are
29 investigating the scene, and hopefully, those reports do

1 assist them in figuring some things out.

2 Q. Okay. Now one of the things that-- and so in your,
3 it's not your responsibility, for instance, to read the
4 prints. It's your responsibility to collect the prints. Is
5 that correct?

6 A. That's exactly right.

7 Q. And so you couldn't tell us who the prints actually
8 belonged to, but you can tell us that you actually collected
9 some prints; right?

10 A. That's right. I cannot say whose prints they were
11 that I lifted, but I can tell you that I did lift prints.

12 Q. And I think you sent them or you forwarded them on
13 to the Crime Lab to have somebody else read them to tell us
14 whose they were if possible; is that correct?

15 A. Yes, sir. I submitted them to the lab, and then a
16 fingerprint examiner then requests the evidence from the
17 vault and will compare these prints that I lifted from the
18 crime scene to known inked prints once they have a suspect.

19 Q. Now one of the places that you got prints from, one
20 of the places that actually took prints and the place you got
21 prints from was right there on the counter that we saw in the
22 store, the counter that had that drawer that came out; is
23 that correct?

24 A. Yes, sir. I dusted that entire area around all the
25 victims. All the surfaces that were appropriate to dust for
26 latent prints I did dust for latent prints, and that counter
27 was near three of the victims. So yes, sir; that is one of
28 the areas that I dusted.

29 Q. Okay, so you dusted near the victims, and was the

1 thinking that perhaps someone who was, had some
2 responsibility for the victims may have come in that
3 proximity? Was that the thinking?

4 A. Well, we typically dust high likelihood areas in an
5 effort to be both practical and do whatever work we possibly
6 can. We dust the high likelihood areas, and those are the
7 areas that entrance ways and exit ways and that type thing
8 that have been held secure that the suspect or suspects could
9 have touched. And so yes, sir, the area, the counter right
10 around where three of the bodies were located was in my
11 opinion a high likelihood area. And also, there was the cash
12 drawer and the safe in the back of the store, and those were
13 the areas that we dusted.

14 Q. So would the answer to my question be yes?

15 A. What was your question?

16 Q. My question was you dusted there because you felt
17 that someone who may have had some responsibility or been
18 present may have come in that area; is that correct?

19 A. Yes, plus the reason that I just gave.

20 Q. Okay, very good. Secondly, would it be safe to say
21 that the cash register was right there; is that correct?

22 A. There was not actually a cash register. There was
23 a cash drawer. If y'all remember the photograph that was
24 pulled out, there was a cash drawer there.

25 Q. That was right there near that counter or actually
26 inside that counter, pulled out from the counter?

27 A. Yes, sir. It was about in the middle of the
28 counter on the front part.

29 Q. Now irrespective, in other words, regardless of

1 whatever kind of problems you have in getting prints from
2 furniture that is soft and things of that nature that is made
3 of cloth, you did get prints off this counter. Is that
4 correct?

5 A. Yes, sir. I did lift latent prints off of that
6 counter.

7 Q. And I'm not mistaken, do you have with you the
8 print cards, by the way?

9 A. No, sir. I do not. I do have an evidence
10 submission form, however, that says that I collected five
11 latent lift cards, and as I explained earlier, those are the
12 cards-- now I may put more than one print. Remember, I dust
13 to try to visualize, and I use tape and then I lift them up
14 and put them on a piece of paper. If I can fit three or four
15 pieces of tape on a piece of paper, then I will. But in
16 total here, I submitted five cards. But I don't know how
17 many prints that was.

18 Q. Okay, so it could have been a multiple number of
19 prints on--

20 A. --I would say there was at least five.

21 Q. Okay, at least five prints. It could have been
22 more?

23 A. Yes, sir.

24 Q. And do you know whether or not the prints of Mr.
25 Flowers were sent to the gentleman who was going to examine
26 the prints for the analysis and comparison? In other words,
27 to see if those prints matched his?

28 A. Is your question do I know if known inked prints
29 from Curtis Flowers were submitted?

1 Q. Yes, ma'am.

2 A. I did not receive them, and I did not take them
3 that day. So I would assume that they were. However, I
4 don't have firsthand knowledge of that.

5 Q. And whoever took those would be able to tell us
6 whether or not his prints matched up; is that correct?

7 A. No. The person who took their, who took a
8 suspect's prints, those are not the people who are going to
9 do the comparisons either.

10 Q. Let me correct myself. Thank you very much. If
11 whoever made the comparisons could tell us whether or not the
12 prints that were taken by yourself and sent to them matched
13 Mr. Flowers; is that correct?

14 A. Yes, sir.

15 Q. Okay. And the reason you take prints is what we
16 call, there is-- you take prints not only to include people,
17 but prints can also exclude people as being the person that
18 touched that surface and left that print; is that correct?

19 A. Not necessarily.

20 Q. Okay.

21 A. Because it's possible to touch a surface and not
22 leave, not leave a fingerprint.

23 Q. All right, listen to my question very carefully.
24 Comparison of the print will tell us whether the person who
25 left the print, if the person left the print that, in fact,
26 you lifted, if the print is of value. Is that correct?

27 A. Yes, sir.

28 Q. So if the print is of value in those prints that
29 you sent, would you make that determination of whether they

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 are of value, or would the gentleman who examined them make
2 that determination?

3 A. It would be the male or the female that examines
4 them. We have male and female examiners, and I don't know
5 who worked this case. But yes, they would-- I actually lift
6 what I see as ridge detail, and then the fingerprints
7 experts, the fingerprint examiners will determine whether or
8 not those prints are valuable.

9 Q. Do you know a gentleman by the name of Michael E.
10 McSparrin?

11 A. Yes, sir.

12 Q. Does he work at the lab?

13 A. He did at one time. He is no longer with us.

14 Q. Do you know whether he examined the prints or not?

15 A. I would assume -- is that report signed by him?

16 Q. I have a Mississippi Crime Lab report here I am
17 showing you here.

18 A. He is a latent print examiner, and this is a latent
19 print report, so I would imagine that if this is a real
20 document, that he did indeed examine the impressions that I
21 submitted.

22 Q. Okay. And so we are not talking about a situation
23 here as to these prints that are listed here and which you
24 have--

25 BY MR. HORAN: --Your Honor, can we have that
26 marked for identification purposes, please?

27 BY THE COURT: You can do that.

28 BY MR. LUMUMBA: I have no problem.

29 (FINGERPRINT REPORT BY MICHAEL McSPARRIN WAS

1 MARKED AS DEFENDANT'S EXHIBIT D-1 FOR
2 IDENTIFICATION.)

3 BY MR. LUMUMBA:

4 Q. Showing you D-1 here or D-1 for identification
5 purposes, that is the report you just looked at; is that
6 correct?

7 A. Yes, sir. D-1 is the report that I just looked
8 at. It's a Mississippi Crime Laboratory latent print
9 analysis report that is dated August 23rd, 1996, signed my
10 Mike McSparrin.

11 Q. Okay. And when we talk about prints of value which
12 have been lifted, we are not talking about whether a person
13 has touched something and not left a print. What we are
14 saying is that, in fact, those are prints that somebody did,
15 in fact, leave. Is that correct?

16 A. Yes, sir.

17 Q. Those did come from human hands; is that correct?

18 A. That would have to be made by a latent print
19 examiner, but it looked like it to me.

20 Q. Okay. So the question with them, assuming they
21 did, the print examiner concluded they came from human hands,
22 the determination to be made then is what human hands laid
23 those prints. Is that correct? The comparison helps you
24 identify that? You can look at a comparison and you can
25 determine-- well, if you look at a comparison for a
26 particular person-- say let's assume that the Defendant's
27 print was sent to them. That comparison would tell us, it
28 would either include or exclude the Defendant as the person
29 leaving those particular prints. Is that correct?

1 A. That's exactly right.

2 Q. Now in the-- so you had five print cards. You may
3 have had multiple prints on a card; is that correct?

4 A. Yes, sir.

5 Q. Okay, now you also said that you took prints out of
6 a vehicle, an automobile which was shown to you, a couple of
7 pictures were shown to you, and I think identified as a
8 State's exhibit?

9 A. Yes, sir. I did dust for latent prints from a
10 brown vehicle.

11 Q. Did you also come up with prints which, in fact, I
12 noticed you came up with prints from that vehicle also which
13 could be, which you also transmitted to Mr.-- or to the Crime
14 Lab. Is that correct?

15 A. Yes, sir. My paperwork shows that I recovered one
16 latent lift card containing lift from an older model brown
17 Pontiac Phoenix LJ, which is the same photograph that I
18 identified in the pictures.

19 Q. And one of the places that you examined when you
20 looked at that card, you looked for prints around the window,
21 and you also looked for prints around the glove box. Is that
22 correct?

23 A. Yes, sir.

24 Q. And you did come up with how many cards?

25 A. I submitted one card that I collected. One card
26 from that car.

27 Q. And you don't know how many prints were on that
28 card?

29 A. No, sir.

1 Q. So despite whatever difficulties one might have in
2 finding prints in an older model car, you found some; is that
3 right?

4 A. Yes, sir.

5 Q. And despite whatever difficulties one might have in
6 finding prints on some furniture somewhere in the store, you
7 found five cards, five different cards you put prints on from
8 the counter of that store; is that correct?

9 A. Yes, sir.

10 Q. And that was the counter which had the drawer that
11 pulls out--

12 A. The money box, yes, sir, and the counter that is
13 very near the victims.

14 Q. Do you remember what condition the glove
15 compartment was in that you examined?

16 A. I believe it was open.

17 Q. Did anybody ask you to examine it to see if that
18 glove box had actually ever been broken into or anything of
19 that nature?

20 A. No, sir.

21 Q. Okay, so no one asked you to do that?

22 A. No, sir.

23 Q. So you don't have any recollection of any signs
24 that it had been broken into, do you?

25 A. No, sir.

26 Q. Do you have any records with you presently that
27 would tell us whether or not you actually took any lifts or
28 lifted any prints from the actual glove compartment?

29 A. (Pause while witness looks through records.) No,

1 sir. If I had access to the cards though, I do label the
2 cards. Again, I know that I did collect one card from that
3 vehicle. I'm not sure how many lifts.

4 Q. Okay. Thank you.

5 BY MR. LUMUMBA: May I consult with the
6 District Attorney just a second?

7 (Pause while Mr. Lumumba and Mr. Evans
8 confer.)

9 BY MR. LUMUMBA:

10 Q. You don't know whether or not the print cards were
11 ever sent back from the Crime Lab, do you?

12 A. Sent back?

13 Q. From the Crime Lab to the local authorities?

14 A. No, sir.

15 Q. Okay, now let me-- so it would be safe to say that,
16 well, we understand the limitations of your function, but
17 just so it is very clear to the ladies and gentlemen of the
18 jury. There is nothing that you can tell us that would say
19 that Mr. Flowers was actually in that store that day; is that
20 correct?

21 A. Well again, that is not my function as far as--

22 Q. --I didn't ask you what your function was yet, and
23 I don't mind your explaining but--

24 A. --okay--

25 Q. --I would just like you to answer that question.

26 A. Would you ask the question again, please.

27 Q. Is there anything that you can say that would tell
28 us that Mr. Flowers was in that store that day?

29 A. I can't make that determination.

1 Q. Do you know who opened the cash register, and you
2 have indicated that the cash drawer was not opened when you
3 arrived. Do you know who opened it? Did you open it?

4 A. Either I did or one of the other investigators to
5 document the contents.

6 Q. And as far as the-- you talked about various
7 different impressions that you carefully took pictures of.
8 You don't, of course, know who was in the, who was in the
9 facility prior to the time that you arrived actually of your
10 own personal knowledge, do you?

11 A. My personal knowledge, no.

12 Q. The lift that you obtained from the store-- I mean,
13 I'm sorry-- from the car, not from the store; do you remember
14 that you did get a lift that came either from the glove box
15 or from the window? Would that be a safe statement, or do
16 you recall?

17 A. Yes, sir. Yes, sir.

18 Q. You don't remember which one; is that correct?

19 A. I believe it was from the window, but I'm not, I'm
20 not sure. I would need to look at the card to be for sure.

21 Q. Right, and that was inside the car; is that
22 correct?

23 A. Again yeah, it should have been inside the car, but
24 to be a hundred percent sure, I would need to look at the
25 card that information was recorded on.

26 Q. Okay. And whatever was on that card was accurate
27 at the time that you composed that card; is that correct?

28 A. What was on the card was accurate when I wrote it?

29 Q. Right.

1 A. Yes, sir.

2 Q. And that particular card would have been given to
3 whatever fingerprint expert made the further comparisons and
4 examinations to try to match the prints to the person; is
5 that correct?

6 A. I don't know that it would be given to the same
7 examiner, but it would be given to an examiner to examine;
8 yes, sir.

9 Q. And at some point the examiner would have been the
10 one who actually made the comparisons?

11 A. In order for them to make a comparison, it would be
12 necessary for them to see the card; yes, sir.

13 BY MR. LUMUMBA: All right, thank you very
14 much. I don't think I have any further questions.
15 Judge, bear with me just one moment, please. We
16 don't have anything else of this particular
17 witness.

18 REDIRECT EXAMINATION BY MR. EVANS:

19 Q. Ms. Schoene, I just have a few follow-up
20 questions. To start with, as far as the car, do you have any
21 way of knowing from your personal knowledge whether or not
22 that passenger window was up or down at the time the gun was
23 taken out of the glove box?

24 BY MR. LUMUMBA: Objection. She has no way of
25 knowing that a glove [sic] was taken out of the
26 glove box. I object to that question. It assumes
27 some facts which are not in evidence.

28 BY THE COURT: What was your question?

29 BY MR. EVANS: Whether she knew whether the

1 window was up or not when the gun was taken out.
2 He has already asked her about printing it, about
3 the gun being taken out of the glove box. I just
4 wanted to know if she knows whether the window was
5 up or down.

6 BY MR. LUMUMBA: Judge, nobody in this trial
7 has testified that a glove--a gun was taken out of
8 a glove box. And if somebody says that, then I
9 think I have a right to cross-examine them.

10 BY THE COURT: I sustain that objection. That
11 assumes facts that aren't in evidence.

12 BY MR. EVANS:

13 Q. The reason-- let me try to simplify it then. At
14 the time you were asked to print the card, did you know
15 whether or not the window, passenger window was up or down at
16 any time that they wanted to know about prints from, for
17 whatever reason?

18 A. What I can tell you is that my notes reflect that
19 the windows when I arrived were rolled up.

20 Q. Okay, and you don't know when they were rolled up;
21 is that correct?

22 A. No, sir; I don't know. I have, "Vehicle is sitting
23 outside under a tree. Windows are rolled up. It has been
24 raining."

25 Q. All right. From your observation of that vehicle
26 if the window was down, what would have had to have been
27 touched to recover something that may have been in the glove
28 box?

29 A. Nothing.

1 Q. And you have been asked about prints. I want to
2 compare a crime scene with this courtroom. We all know that
3 there are a lot of people in this courtroom today; is that
4 correct?

5 A. Yes, sir.

6 Q. And we know that probably in the past there have
7 been many people here on many trials; is that right?

8 BY MR. LUMUMBA: Excuse me. This is his
9 witness. I would object to leading. I don't have
10 any problem with his question, but I object to
11 leading.

12 BY THE COURT: Okay, don't lead.

13 BY MR. EVANS: Your Honor, I haven't even
14 gotten to my question yet. I don't, I can't be
15 leading. I haven't even asked her a question.

16 BY THE COURT: Okay, well, I am just telling
17 you don't lead, okay?

18 BY MR. EVANS: Yes, sir. All right.

19 BY MR. EVANS:

20 Q. Assuming that you were to find some prints on this
21 table right here.

22 A. Okay.

23 Q. Would you have any way of knowing when those prints
24 were left there?

25 A. If I could determine the last time that desk was
26 cleaned, I could tell you those prints were left after the
27 desk was cleaned. But other than that, no.

28 Q. All right. And other than prints that you could
29 actually find, would you have any way of knowing what anybody

1 that is in this room now may have touched in this room?

2 A. No.

3 Q. Okay. In this particular crime scene that you were
4 asked to investigate, do you know whether the killer in this
5 case had to touch any of these objects that you dusted for
6 prints or not?

7 A. Do I know whether or not he had to have touched
8 them?

9 Q. Right.

10 A. No, sir.

11 Q. You were asked by opposing counsel if you
12 determined or could determine who committed the crime. Would
13 it be a fair statement to say that your investigation helps
14 officers to determine who commits crimes?

15 BY MR. LUMUMBA: I think that is still
16 leading, Judge. I object to it.

17 BY THE COURT: Overruled.

18 BY THE WITNESS:

19 A. Does my investigation help investigators solve the
20 crime? Was that the--

21 Q. Correct.

22 A. Sometimes it does, yes. Sometimes it excludes
23 people. Sometimes it includes people.

24 Q. All right, and in this particular case you have
25 already testified that you recovered physical evidence and
26 submitted it to the State Crime Lab; is that correct?

27 A. Yes, sir. That's correct.

28 Q. And you were asked about persons at the crime
29 scene. During part, as part of your investigation, did you

1 have an occasion to document who all was at the crime scene?

2 A. Yes, sir.

3 Q. And do you have that?

4 A. Yes, sir. I have a list of 23 people who were
5 there while I was there.

6 Q. And that has been furnished; is that correct?

7 A. Has been furnished to the District Attorney's
8 Office, yes, sir.

9 Q. Do you have that list with you?

10 A. Yes, sir.

11 Q. Would you tell us who all was at the crime scene?

12 BY MR. LUMUMBA: I think that is beyond the
13 scope of the cross-examination. In other words, it
14 is like new direct examination, so I object for
15 that reason.

16 BY MR. EVANS: Your Honor, he attempted to--

17 BY THE COURT: --Well, let him finish.

18 BY MR. EVANS: Well, I thought he was through.

19 BY MR. LUMUMBA: That is my objection. I do
20 have something to say depending upon what the Judge
21 rules.

22 BY THE COURT: Well, you raised the element or
23 the issue on cross-examination as to the viability
24 of prints, whether they were there or not there,
25 and he is entitled to go into to show who was
26 there.

27 BY MR. LUMUMBA: Okay. He is talking about
28 impressions now, Judge, but that's, but anyway, I
29 will accept the Court's ruling. But what I do want

1 to do is if we can make some clarification as to
2 who, between what people she is reading were
3 actually there when she arrived or what people had
4 left the scene and came back. I think that was her
5 testimony. Some people actually left and came
6 back.

7 **BY THE COURT:** Okay, she can testify that way
8 to the best of her ability if she knows that.

9 **BY MR. EVANS:** Your Honor, at this point I am
10 only trying to clear up what he tried to attack her
11 on, and that is that she did document who was at
12 the scene.

13 **BY THE COURT:** And she can only testify to
14 that as to what she knows, and that is what my
15 ruling is.

16 **BY MR. EVANS:** Yes, sir.

17 **BY MR. LUMUMBA:** And I would object to the
18 comment that I was trying to attack her at all. I
19 think I am the one that waived her
20 qualifications--

21 **BY MR. EVANS:** --May I proceed, Your Honor?

22 **BY THE COURT:** Let's move on.

23 **BY MR. EVANS:**

24 Q. Did you document who was at the scene?

25 A. Yes, sir. I did.

26 Q. And who did you recover the scene from?

27 A. I was, the Chief of Winona Police Department,
28 Johnny Hargrove.

29 Q. And was the scene secure when you arrived?

1 A. Yes, sir. It was.

2 Q. And who secured the scene after you arrived?

3 A. Well, it was secured upon my arrival. You mean who
4 protected, who provided--

5 Q. --Right. Did you see to it that the scene was
6 secure after you arrived?

7 A. When you say secured, do you mean to keep -- I
8 don't quite understand what you mean. The scene was secure
9 upon my arrival, and it stayed secure while I was there.

10 Q. Okay.

11 BY MR. EVANS: Nothing further of this
12 witness, Your Honor. And I think she has to teach
13 a class tonight, so we would ask that she be
14 finally released.

15 BY MR. LUMUMBA: Judge, I have no objection to
16 that, and we have a comment on one-- well, we can--
17 I don't know when you want to -- can I entertain a
18 quick thing on another witness right quick with you
19 at the bench?

20 BY THE COURT: Yeah, this is what I'm going to
21 do. The jury's lunch will be here in ten minutes.
22 So I'm going to take a break for lunch right now,
23 and we can entertain it then. Is that okay?

24 BY MR. LUMUMBA: Yeah, can we just approach in
25 a minute? It might only take--

26 BY THE COURT: --I am going to let you
27 approach, but I'm going to let the jury go. Is
28 that okay?

29 BY MR. LUMUMBA: Well, what I was trying to do

1 is get a witness in real quick.

2 BY THE COURT: Okay, why don't y'all come up
3 here, and let's see what you are talking about
4 because you lost me. She is excused. You are free
5 to go.

6 BY THE WITNESS: Thank you.

7 WITNESS EXCUSED.

8 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
9 THE JURY AS FOLLOWS:)

10 BY MR. LUMUMBA: Debbie Haller. The only
11 thing that she did was take the scrapings
12 underneath one of the deceased fingers, and that
13 was Mr.--

14 BY MR. HORAN: --Golden.

15 BY MR. LUMUMBA: Golden. Right, that's what
16 she did. She analyzed them and said that the DNA
17 there did not match the Defendant's. So that's the
18 only thing I'm going to ask her. She was the
19 person that you said we could take out of order,
20 and I do want to put her on.

21 BY THE COURT: What about if they are willing
22 to stipulate to it, will you accept that
23 stipulation?

24 BY MR. LUMUMBA: I do want to put her on,
25 Judge, but if you want to do it after lunch, fine.
26 But she is the one, remember, that is supposed to
27 be getting out of here, I think tomorrow. I think
28 tomorrow is her-- what is today? Wednesday? This
29 is Wednesday. Tomorrow she is trying to leave.

1 BY MR. EVANS: Why don't we do it after
2 lunch. That will give us a chance to look at it.

3 BY MR. LUMUMBA: That is fine.

4 BY THE COURT: Okay, we will do it. I'm going
5 to take an hour, okay?

6 BY MR. LUMUMBA: Okay.

7 END BENCH CONFERENCE.

8 BY THE COURT: Ladies and gentlemen, we are
9 going to take an hour for lunch. Your food ought
10 to be here in about 10 minutes if it's not
11 already. It's here?

12 BY THE BAILIFF: It's not here yet.

13 BY THE COURT: Okay. It will be here in about
14 ten minutes, but y'all can go to the jury room, and
15 the bailiffs will take care of you.

16 JURY LEFT THE COURTROOM.

17 BY MR. HORAN: Your Honor, I have one other
18 matter that I would like to bring to the Court's
19 attention. During the break a few moments ago, I
20 inquired of counsel for the Defendant, Mr. Lumumba,
21 as to whether or not he had any other recordings of
22 witnesses, and he said that he did. And he says he
23 is not going to provide them to the State. And we
24 have crossed this hurdle once before. I would like
25 to bring to the Court's attention to the case of
26 Glaskox v. State, 659 So.2d 591 as well as the
27 discovery rule that requires them to provide
28 reciprocal discovery. Mr. Lumumba represents to me
29 that this is impeachment proof; is that right, Mr.

1 Lumumba?

2 BY MR. LUMUMBA: I will say what I--

3 BY MR. HORAN: I mean I don't want to
4 misrepresent to the Court what he told me. He told
5 me this was impeachment proof. The rule
6 specifically states what they have to provide, and
7 in Subsection G, 9.04 states that "Materials"-- at
8 the very bottom of that particular-- it's a long
9 paragraph. The Court can read it himself.
10 "...determinations such as to whether" or not
11 "matters requested in discovery are relevant to
12 the case, exculpatory, possible instruments of
13 impeachment, and the like, may be made only by the
14 party requesting or to receive the discovery."

15 BY THE COURT: Where are you reading that?

16 BY MR. HORAN: G. 9.04.

17 BY THE COURT: I have got that. What part of
18 G?

19 BY MR. HORAN: The very last, the last
20 paragraph, Your Honor. You can read the whole
21 paragraph. I just read the relevant. And I will
22 present to the Court the case of Glaskox v. State.

23 (Pause while the Court reads.)

24 BY MR. LUMUMBA: Judge, the rule says very
25 clearly as far as I am concerned, there had is no
26 ambiguity in this, and I have never, this is the
27 first time I have heard this raised. But here we
28 have Subsection C. We have-- now keep in mind, I
29 want you to understand what we are talking about

1 here. They have been furnished every recording we
2 have. In fact, they have-- and there are some
3 recordings they have that we haven't received.
4 Recently, I think, that they had a recording of a
5 Mr. Maurice Hawkins which we haven't received, but
6 they have been furnished the recordings that we
7 have and with transcripts of them if we made
8 transcripts. And I think we made transcripts of
9 all of them; I'm not sure. But what they don't
10 have, where it exists, they do not have transcripts
11 or recordings which we made of their witnesses who
12 we don't intend to call which is information which
13 is being used solely for impeachment. In fact, it
14 won't be used at all if the witnesses testify
15 consistently to what they told us.

16 Now what it says in C, that is Rule of
17 discovery C: "If the defendant requests discovery"
18 -- now also, I think it should be understood is
19 that the requirement for us is different
20 requirements for them. I think if you read up
21 higher, they have to disclose everything which the
22 Rules provides.

23 For us it says, "If the defendant requests
24 discovery under this rule, the defendant shall,
25 subject to constitutional limitations," - so that
26 is the first difference - "promptly disclose to
27 the prosecutor and permit the prosecutor to
28 inspect, copy, test, and photograph the following
29 information and material which corresponds to that

1 which the defendant sought and which is in the
2 possession, custody, or control of the defendant
3 or" his "attorney, or the existence of which is
4 known, or by the exercise of due diligence may
5 become known, to the defendant or the defendant's
6 counsel."

7 And then it goes on to state what the
8 following is talking about. And what it says is
9 "Names and addresses of all witnesses in chief
10 which the defendant may offer at trial, together
11 with a copy of the contents of any statement,
12 written, recorded or otherwise preserved of each
13 such witness; and the substance of any oral
14 statement made by any such witness."

15 Now we are not required to give them, Judge,
16 the way I see it -- it is just like I don't think,
17 and, of course, he had a different-- they are not
18 required to give us what they got for rebuttal. I
19 have been told that a million times. They don't
20 have to give us what they have got for rebuttal,
21 right, because they don't know what we are going to
22 have in the case in chief. Now the same thing is
23 true for us. This Rule only requires-- in fact,
24 even more so for us, this Rule only requires us to
25 give them statements that we have for witnesses in
26 chief, and we have done that. We have given them
27 everything. Anything else that we have is
28 something that will only be used to impeach
29 witnesses in chief in their case, not our case, if

1 they don't testify consistently to what they have
2 told us. So I don't see why they would really be
3 entitled to that. Now we will do whatever the
4 Court orders, but I think that rule is pretty
5 clear.

6 And that "G" is only when legitimate disputes
7 arise. This Rule is so clear; there is no
8 legitimate dispute here, and certainly, you know,
9 so that is my position.

10 BY MR. HORAN: Your Honor, we have to give
11 rebuttal; we have to give everything. We are not
12 limited to our--

13 BY THE COURT: --but it is different between
14 the State and the--

15 BY MR. HORAN: --It is, Your Honor. It is
16 different only in the sense that once they ask for
17 discovery, and they asked for 9.04 discovery on all
18 matters, that they have to give all matters. The
19 second thing I want to bring to the Court's
20 attention is that under 2. of "C," it says, "Any
21 physical evidence...which the defendant may offer
22 into evidence." They have a tape. If she denies
23 it, they are going to have to play the tape. That
24 is physical evidence. They have got to provide
25 that tape. Otherwise, it has not been discovered.

26 BY THE COURT: No, that isn't what the Rule
27 says.

28 BY MR. HORAN: What is it?

29 BY THE COURT: The Rule says it's witnesses in

1 chief, and you are making apples out of oranges
2 saying the tape is physical evidence. The tape is
3 the statement; that's what it is, and that is what
4 they have to furnish is the evidence of witnesses
5 in chief. They do not have to furnish anything
6 other than that.

7 BY MR. HORAN: Your Honor, the whole argument
8 is not whether or not they have something in their
9 possession that is impeachment or not. The
10 question turns on whether or not they have-- and
11 "C" says once you request these things, and the
12 Court well knows we have had discovery requests
13 that take out certain parts of 9.04. It clearly
14 says if you ask for it, you have got to give it.
15 Request the following information which corresponds
16 to that which the defendant requested. It does not
17 limit it to those three things.

18 BY THE COURT: Yes, it does. It lists them 1,
19 2, 3.

20 BY MR. HORAN: No, sir.

21 BY THE COURT: Well, it does. That is the
22 Court's ruling anyhow.

23 BY MR. HORAN: All right.

24 BY MR. LUMUMBA: So we are coming back at what
25 time, Judge?

26 BY THE COURT: Well, an hour.

27 BY MR. HORAN: If you would read the Glaskox
28 case. I understand that it may give you some--

29 BY THE COURT: --Well, does that case say in

1 there that it is entitled to impeachment?

2 BY MR. HORAN: Yes, sir.

3 BY THE COURT: To impeachment? All right,
4 well, where is it?

5 BY MR. HORAN: It's right there in front of
6 you.

7 BY THE COURT: All right, I will read it.

8 (WHEREUPON THE COURT LEFT THE COURTROOM. THE
9 COURT THEN RETURNED BRIEFLY WITH ONLY MR. HORAN AND
10 MR. FREELON PRESENT AND OUTSIDE THE PRESENCE OF THE
11 JURY FOR THE FOLLOWING:)

12 BY MR. HORAN: There is a case of Ivy v. State
13 which is certainly a lot more on point than the
14 Glaskox v. State case I cited to you. It's cited
15 at 641 So.2d 15. It does state in there that under
16 one, 9.04 (C)(1) that it may not be discoverable,
17 but it does address whether or not a written
18 statement is physical evidence and whether or not
19 it's discoverable.

20 BY MR. FREELON: Your Honor, can we ask that
21 we be, I be allowed to get a copy of that?

22 BY THE COURT: You can, but how about y'all
23 letting me read the law a little bit, and then I
24 will let y'all have some of it to respond. Is that
25 okay?

26 BY MR. FREELON: I can't respond if I don't
27 know what is in it.

28 BY THE COURT: I know; I am going to give it
29 to you. I am going to go read this first, and then

1 I will give it back to you. I am going to give you
2 plenty of time to respond.

3 (FOLLOWING THE NOON RECESS ON MARCH 24, 1999,
4 THE COURT AGAIN CONVENED IN THE COURTROOM AT 2:03
5 P.M. OUTSIDE THE PRESENCE OF THE JURY WITH ONLY MR.
6 LUMUMBA PRESENT AT FIRST FOR THE FOLLOWING:)

7 **BY THE COURT:** Mr. Lumumba, do you want to see
8 this case?

9 BY MR. LUMUMBA: Thank you, Judge.

10 (The Court handed a case to Mr. Lumumba. UPON
11 THE OTHER COUNSEL WITH THE EXCEPTION OF MR. EVANS
12 ENTERING THE COURTROOM AND WITH THE DEFENDANT
13 PRESENT, THE MOTION HEARING PROCEEDED:)

14 **BY THE COURT:** You ready to hear this matter?

15 BY MR. HORAN: I don't have any other-- I
16 don't have any other argument.

17 BY MR. LUMUMBA: Just a brief rejoinder,
18 Judge. I think--

19 (Pause while the Court pounded the gavel to
20 get order in the courtroom.)

21 BY MR. LUMUMBA: One thing the case obviously
22 ruled on behalf of the defendant that he didn't
23 have to give the discovery, and I think that is the
24 critical thing. The second thing is that I think
25 what they are saying in the Rule that if the, at
26 the time they say consistent with 613, it could
27 possibly be, it may have to be introduced as an
28 exhibit. But I think that under 613 of the Rule,
29 if the Judge reads 613, what that says is once you,

1 once you ask a witness if he made the statement and
2 they deny it, then if the defense or the opposing
3 counsel asks to see the statement, they have to be
4 given the statement.

5 **BY THE COURT:** Right. I think that is a
6 different question though. That is another
7 question as to admissibility. The question right
8 now is whether it's discoverable. Contrary to what
9 I said while ago, the Supreme Court has held that
10 is physical evidence. Well, they held a written
11 statement was. There can't be any difference
12 between that and a taped statement. So it is
13 discoverable, and they will have, you will have to
14 produce it for them. Now when- huh?

15 **BY MR. HORAN:** Are we ready?

16 **BY THE COURT:** You ready for what?

17 **BY MR. HORAN:** To proceed.

18 **BY THE COURT:** Okay. But I mean what about
19 when are we going to produce the stuff?

20 **BY MR. HORAN:** I assume that is the only one
21 they have got.

22 **BY THE COURT:** See, I am in the dark as to
23 what they have got.

24 **BY MR. LUMUMBA:** Oh, I have got a couple of
25 statements. That's all, but go ahead.

26 **BY MR. HORAN:** I assume we can have them by 5
27 o'clock today will be fine.

28 **BY MR. FREELON:** Can we be allowed to at least
29 look at some law? I mean what law has been

1 presented to this Court has been the law--

2 **BY THE COURT:** --I tell you what; I will give
3 you -- yeah. But they are not, but they are not
4 going to be-- I'm not going to allow them to be
5 used until such time as -- I mean I have held that
6 they are discoverable based on Ivy v. State. So I
7 am saying that they cannot be used. Now if you
8 produce me some law contrary to that that says that
9 they can be used, yeah, I am going to listen to
10 it.

11 **BY MR. FREELON:** I say that because this is a
12 1994 ruling.

13 **BY THE COURT:** And I have read it, but I did
14 not shepardize it, so I don't -- but based on that
15 law, it is discoverable, and I require that it be
16 discovered to them at 5 o'clock. Okay, providing
17 you don't--

18 **BY MR. FREELON:** I can't get any law by 5
19 o'clock. By 6 o'clock or-- we are going to shut
20 down at 5:00; right?

21 **BY THE COURT:** Yeah, we are going to shut down
22 at 5:00.

23 **BY MR. FREELON:** I mean today you said you are
24 leaving at 5:00 for sure?

25 **BY MR. HORAN:** Three hours. I stayed through
26 lunch and found it.

27 **BY THE COURT:** Well.

28 **BY MR. FREELON:** Well, are you going to allow
29 me to use yours?

1 BY MR. HORAN: Judge, all I, I just--

2 BY THE COURT: --You are going to, they are
3 going to have to furnish it unless he finds law to
4 the contrary of what you just said. They are going
5 to have to furnish to you sufficiently in time for
6 you to be able to examine it before I'm going to
7 allow it to be admitted. How is that ruling?

8 BY MR. HORAN: That is fine.

9 (Mr. Evans enters the courtroom.)

10 BY THE COURT: Okay. I will give you--

11 BY MR. FREELON: We will try to do it during
12 the break and have it by 5:00.

13 BY THE COURT: Okay.

14 (Off the record briefly.)

15 BY MR. LUMUMBA: Judge, could I have another--

16 BY THE COURT: --Let me get the jury worked
17 out first.

18 (Pause while the Court confers with the
19 Bailiff.)

20 BY THE COURT: I am trying to work out where
21 they are going to eat tonight.

22 BY MR. LUMUMBA: Oh, I see. Can I just have
23 one more word because I think the point that I was
24 trying to state to the Court is if you look to the
25 paragraphs in question here on the second to the
26 last page, it says that, "If the statement is
27 discoverable, it must be viewed as physical
28 evidence which may be offered in evidence. Because
29 the statement was in writing, it could be

1 considered physical evidence." It says it **could** be
2 considered physical evidence, didn't say it would
3 be. Then it says, "It would be offered in
4 evidence, however, only if" - **only** - "if the
5 witness testifies differently and then pursuant to
6 provisions of MRE 613."

7 What my contention is, is what this is doing
8 is making the discovery rule here contingent upon
9 the rule which is normally just used as a rule for
10 admission into evidence. And I think that what
11 they are saying is that if you read 613, it does
12 have a discovery provision within it too. And the
13 discovery provision there is that once the witness
14 testifies that they didn't make that statement,
15 then before the statement is actually used to
16 impeach, then the other side has to give it to the
17 counsel on the other, on the opposing side. In
18 other words, the counsel offering the statement has
19 to give it to the counsel opposing it prior to the
20 time it is used to impeach, which is right before
21 the witness is impeached. So you understand what
22 I'm saying?

23 **BY THE COURT:** Yes, sir. But I don't think
24 that is what the Rule says. That case says it is
25 physical evidence. Now that is-- they have
26 determined that it's physical evidence. And Rule
27 9.04 (C) (2) requires you to produce physical
28 evidence.

29 **BY MR. LUMUMBA:** Well, how about--

1 **BY THE COURT:** --It's discoverable under that
2 Rule. It may or may not be admissible under 613.
3 I have got to get to that in order to get to that
4 point. They get to see it. Whether y'all use it
5 is another story. And if y'all find that Ivy is
6 not the law, I will listen to that.

7 BY MR. LUMUMBA: Okay.

8 **BY THE COURT:** Okay, are we ready to proceed?

9 BY MR. EVANS: Your Honor, at this point it is
10 my understanding that they want to put Debbie
11 Haller on out of order.

12 BY MR. LUMUMBA: Right.

13 BY MR. EVANS: It is my understanding that the
14 only thing she can testify to is that the
15 fingernail scrapings that came from Derrick
16 Stewart's fingernails were his own blood. We will
17 stipulate to that.

18 BY MR. LUMUMBA: I would like to put her on
19 anyway, Judge, especially since she has come all
20 the way down here. This testimony won't take more
21 than 5 minutes, 10 minutes.

22 BY MR. EVANS: It's not relevant anyway
23 because it's not anything that helps us or helps
24 them. It just shows that he was laying in blood
25 and got his own blood on him.

26 **BY THE COURT:** Well, I would allow her to
27 testify on the defense side of the case, and if she
28 was not an expert who was under these other
29 stipulations and all like that, I would not allow

1 it to go out of order. But if she is going to
2 testify, she has got to testify now. This is not a
3 procedure I like, but I think we are stuck with
4 it. So I'm going to let her testify.

5 BY MR. LUMUMBA: Okay. We would call Debbie
6 Haller.

7 BY THE COURT: Okay, let me call the jury
8 first. I am ready.

9 BY MR. HORAN: Will you explain that to the
10 jury, please, sir?

11 BY THE COURT: Yeah, I sure will.

12 (JURY ENTERS THE COURTROOM AT 2:15 P.M. ON
13 3/24/99. ALL COUNSEL AND THE DEFENDANT ARE
14 PRESENT:)

15 BY THE COURT: What is this lady's name
16 again?

17 BY MR. LUMUMBA: Debbie Haller.

18 BY THE COURT: Heller?

19 BY MR. EVANS: Haller, H A L L E R.

20 BY THE COURT: Ladies and gentlemen, the
21 normal procedure is that the State put on its case
22 first and then the Defense put on their witnesses.
23 That is the procedure I follow almost all the time
24 since you have a natural progression of the case.
25 However, this lady is an expert witness, and she
26 has other obligation during the week where she has
27 other trials that she has to be to, be at, so the
28 Defense has requested that I allow him to put her
29 on now so she can go meet those other obligations.

1 So I'm going to put her on out of order. She is
2 not a part of the State's case. She is a part of
3 the Defense case. Y'all understand that?

4 (Jurors nod their heads.)

5 BY MR. HORAN: Your Honor, we stipulate as to
6 her qualifications as an expert in her field.

7 BY THE COURT: Do you accept that
8 stipulation?

9 BY MR. LUMUMBA: Certainly. Certainly.

10 BY THE COURT: Okay, which field is that?

11 BY MR. LUMUMBA: She is an expert in the field
12 of--

13 BY MR. EVANS: Serology.

14 BY MR. LUMUMBA: Serology, right.

15 BY MR. HORAN: She has other expertise, but I
16 think that is what is relevant here today.

17 BY THE COURT: Okay. Debbie Haller.

18 DEBORAH KAY HALLER,

19 a white female called to testify out of order as a witness by
20 the Defendant, having first been duly sworn, testified as
21 follows, to-wit:

22 BY MR. LUMUMBA: Ready? Good afternoon,
23 ladies and gentlemen.

24 DIRECT EXAMINATION BY MR. LUMUMBA:

25 Q. Good afternoon, Ms. Haller. Ms. Haller, could you
26 say, please, for the ladies and gentlemen of the jury what
27 your name is?

28 A. My name is Deborah Kay Haller. My last name is
29 spelled H A L L E R.

1 Q. And Ms. Haller, where is it that you are employed?

2 A. I am the employed with the Mississippi Crime
3 Laboratory in Jackson.

4 Q. Now your qualifications have actually been
5 stipulated to, but can you tell the ladies and gentlemen of
6 the jury what it is that you do there, and just explain to
7 them a little bit about what that is that you do?

8 A. I work in the bioscience section of the Crime
9 Laboratory which is the section that analyzes items of
10 physical evidence for the presence or absence of body fluids
11 such as blood. I then take these samples and perform PCR DNA
12 analysis on them in order to try and determine who the
13 possible donor of the sample is. So I take a questioned
14 sample, which is a sample recovered from either an individual
15 believed to be involved or the crime scene or some piece of
16 evidence, and compare it to a known reference sample which
17 are usually liquid blood samples submitted on the individuals
18 believed to be involved in order to determine if the two DNA
19 profiles are either consistent or not consistent. If the DNA
20 profile of a questioned sample is found not to be consistent
21 with a known sample, then that means that person is not the
22 donor of the questioned body fluid. If the two DNA profiles
23 are found to be the same, then that means the donor of the
24 known sample can be a possible donor of the questioned
25 sample.

26 Q. Let's see if we can break down just a couple of
27 things. When we talk about a donor, what do we mean by that
28 term to the lay people?

29 A. The questioned samples, like I said earlier, are

1 usually samples recovered from the crime scene or from an
2 item of evidence at the crime scene. And that is-- we were
3 trying to determine who the donor of that sample is, and I do
4 this by comparing to known reference samples. And these are
5 usually, like I said, liquid blood samples that are taken
6 actually from the bodies of an individual.

7 Q. Okay, now let's say this case, for instance; did
8 you do some work in the case which involved the Tardy
9 Furniture Store incident?

10 A. Yes, sir; I did.

11 Q. Okay, that file had a number on it in your, in the
12 laboratory; is that correct?

13 A. Yes. Our crime laboratory came number is
14 J96-3536-01C.

15 Q. When did you get involved with the investigation in
16 this case or the crime lab work in this case?

17 A. I began my analysis on July 1st, 1997.

18 Q. Now what I would like to ask you, first of all, is
19 when you say you talked about a questioned sample. In this
20 case did you have a questioned sample, and tell us what it
21 was.

22 A. In this case I was requested to examine some
23 fingernail scrapings having been collected from Derrick
24 Stewart. And this would be a questioned sample because we
25 are trying to determine who the donor of the DNA is under the
26 fingernails of this individual.

27 Q. You say fingernail scrapings. What is that?

28 A. This is where someone actually takes some sort of
29 stick or something and actually scrapes from under the

1 fingernails removing any debris or matter that is under the
2 fingernails and deposits them on to a piece of white paper
3 and then seals it up and secures it so that it is not lost.
4 And this is the sample that I examined, the questioned
5 sample.

6 Q. Now did you do it for anyone other than Mr.
7 Stewart?

8 A. No. That is the only questioned sample that I had
9 was the fingernail samples from him.

10 Q. Was other serology and DNA work done in this case
11 that you are aware of?

12 A. Yes.

13 Q. Okay, but you just did this thing on Mr. Stewart;
14 is that correct?

15 A. Yes, that is correct. That is the only questioned
16 sample that I examined.

17 Q. Okay. Having taken the scrapings of the debris
18 underneath his nails, did you make a comparison on them to
19 determine where they came from?

20 A. Yes, I did.

21 Q. Okay, and tell the ladies and gentlemen of the jury
22 what you were able to determine.

23 A. Okay, I developed a DNA profile on the matter
24 collected from under the fingernails of Derrick Stewart and
25 determined that it was consistent with the DNA profile
26 obtained from the known reference sample labeled Derrick
27 Stewart. In other words, what was under his nails is
28 consistent with having come from him.

29 Q. To the best of your knowledge, was anything under

1 his nails that was consistent as having come from Mr.
2 Flowers?

3 A. No. There was no DNA from any other person other
4 than Mr. Stewart under his nails.

5 Q. Okay. Then I would like to ask you this finally.
6 In this case did you also assist by forwarding some evidence
7 to a person in New Orleans, an expert in New Orleans, to have
8 them do some DNA analysis?

9 A. Yes. I believe either I did it or someone in my
10 section did.

11 BY MR. LUMUMBA: Okay, I would like to get
12 this marked for identification purposes, please.

13 (LETTER DATED 9/3/96 FROM MS. HALLER TO ANNE
14 MONTGOMERY AT GENTEST WAS MARKED AS DEFENDANT'S
15 EXHIBIT D-2 FOR IDENTIFICATION.)

16 (Exhibit D-2 for identification was shown to
17 Mr. Evans.)

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
19 THE JURY AS FOLLOWS:)

20 BY MR. EVANS: At this point we would object
21 to anything other than what this witness has tested
22 herself or that she personally is familiar with.
23 This is just a letter where some exhibits were sent
24 out of state, and we don't have anybody to testify
25 for them.

26 BY MR. LUMUMBA: Now--

27 **BY THE COURT:** Let me read it first.

28 (Pause while the Court reads.)

29 BY MR. LUMUMBA: Judge, it's really not that

1 complicated. I have to be able to put her on, and
2 she will be gone. I just have to put her on to say
3 that she sent this stuff. We have the expert from
4 New Orleans coming in here to testify what she did
5 with the stuff.

6 BY MR. EVANS: I don't have any problem with
7 that.

8 BY THE COURT: Okay.

9 BY MR. LUMUMBA: But I do need to have her--

10 BY THE COURT: --well, I think--

11 BY MR. EVANS: --but I just want this
12 introduced. I don't have any problem with him
13 asking her about it.

14 BY MR. LUMUMBA: Well, she said that, I don't
15 see why--

16 BY THE COURT: --Why would that not be
17 admissible if this lady sent it? It's just a chain
18 of evidence thing.

19 BY MR. HORAN: It is my understanding he was
20 going to try to get her to testify about what
21 happened in New Orleans.

22 BY MR. LUMUMBA: No.

23 BY MR. EVANS: That's what I thought.

24 BY MR. LUMUMBA: No, I wasn't.

25 BY MR. HORAN: He has already asked her did
26 y'all send some stuff to New Orleans.

27 BY MR. LUMUMBA: I'm not saying--

28 BY THE COURT: --What is the harm in this?

29 BY MR. HORAN: He can just introduce the

1 report. He doesn't have to have his witness up
2 here. I thought he was introducing a report. That
3 is not the report.

4 BY MR. LUMUMBA: I'm not trying to--

5 BY THE COURT: --This is a chain of custody
6 document.

7 BY MR. EVANS: That is not the objection. The
8 objection is I don't want her trying to introduce
9 their testimony from New Orleans with this witness.

10 BY MR. LUMUMBA: I'm not going to do that.

11 BY THE COURT: No, no. That document doesn't
12 do that.

13 BY MR. EVANS: No, that was what the objection
14 was.

15 BY THE COURT: Okay. Well, if it gets to
16 that, then we will deal with that.

17 END BENCH CONFERENCE.

18 BY THE COURT: Has she identified that?

19 BY MR. LUMUMBA: Not yet.

20 BY MR. LUMUMBA:

21 Q. I am showing you what is now marked D-2 for
22 identification purposes and ask if you, do you know what that
23 is?

24 A. Yes. I can recognize D-2 for identification where
25 it bears my signature, and it appears to be a photocopy of a
26 letter that I wrote.

27 Q. Okay, and does it, the letter, does it address some
28 exhibits that you forwarded somewhere?

29 A. Yes, it does.

1 BY MR. LUMUMBA: Okay, I would ask that it be
2 admitted into evidence, please.

3 BY THE COURT: Any objection?

4 BY MR. EVANS: No, sir.

5 BY THE COURT: Okay, let it be marked.

6 (LETTER OF 9/3/96 FROM HALLER TO GENTEST
7 PREVIOUSLY MARKED AS DEFENDANT'S EXHIBIT D-2 FOR
8 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

9 BY MR. LUMUMBA:

10 Q. Okay, could you tell me, please, why you sent some
11 exhibits to New Orleans. I'm not asking you the results of
12 any kind of examination or anything. I would just like to
13 know why you sent some things to New Orleans.

14 A. At the time that this request was made which was--
15 this letter is dated September 3rd, 1996. At that time we
16 had not established our DNA laboratory in the Mississippi
17 Crime Laboratory. We opened our laboratory up in April of
18 '97, and that is when we actually began receiving cases for
19 work. Previous to that, we were going through the
20 developmental studies needed to establish a DNA laboratory.
21 So therefore, when we had a request for DNA analysis on
22 cases prior to April of '97, we would forward those at the
23 request of the submitting agency to the laboratory of their
24 choice, which in this case was a private laboratory in New
25 Orleans.

26 Q. And this DNA testing, is that similar to the same
27 kind of testing you just told us about that you performed?

28 A. Yes, it is.

29 Q. Now. Has it always got to do with fingernail

1 scrapings?

2 A. No. Like I stated earlier, we test any kind of
3 questioned sample which would be any kind of evidence removed
4 from or a stain removed from any kind of evidence. It could
5 be stains from clothing, blood stains collected at crime
6 scenes. Evidence can be any tangible item that might have
7 some bearing on a case.

8 Q. Okay, and referring again to the exhibit which we
9 just introduced which is D-2, I believe, what does that
10 indicate - if you need it to refresh your memory - that you
11 sent to New Orleans? And if there is anything else
12 specifically you want to say about why that was sent, let us
13 know.

14 A. According to Defendant's Exhibit D-2, there were
15 nine items that were sent, and these were cuttings of
16 possible stains, blood stains collected from a navy, a pair
17 of navy shorts. There were actually two cuttings from a pair
18 of navy shorts, two cuttings from a shirt, four cuttings from
19 a pair of white dress shorts, and then one cutting from a
20 pair of white casual shorts. These were all exhibits that
21 were submitted to the Crime Laboratory under this case number
22 that I stated earlier, J96-3536-01C.

23 Q. Okay, is there any indication as to where those
24 were taken from? In other words, those exhibits, where did
25 they come from? Where were they recovered at?

26 A. Yes, and I am reading from this letter. These
27 cuttings are from the suspect's clothes which were collected
28 sometime after the murder. The clothes had been washed in
29 Luminol which is a screening technique that we use to screen

1 evidence that had been washed for the possible presence of
2 blood, or Phenolphthalein which is another screening test
3 that we use, and these are two tests that if the results are
4 positive, means a sample might be blood and should be
5 collected for further testing. But we performed no
6 additional tests on these stains because of their small size,
7 and we preserved them for any kind of DNA work which we were
8 requested to send to the private laboratory.

9 Q. Okay, and so when they say, in other words, are
10 those cuttings from Mr. Flowers' clothes?

11 A. These are cuttings taken from clothes that were
12 identified to us as belonging to the Defendant.

13 Q. Okay, that is Mr. Flowers?

14 A. Yes.

15 Q. Okay. Thank you, can I see that again, please.
16 And this was September 3rd, 1996?

17 A. Yes, it was.

18 BY MR. LUMUMBA: I don't have any further
19 questions at this time.

20 BY THE COURT: Does the State have any
21 questions of this witness?

22 BY MR. EVANS: Yes, sir, briefly, Your Honor.

23 BY MR. LUMUMBA: Just one other.

24 CONTINUED DIRECT EXAMINATION BY MR. LUMUMBA:

25 Q. Did you say yet what laboratory you actually sent
26 this to? If you didn't--

27 A. I believe I did, but we sent them to a laboratory
28 that is known as Reliagene Technologies, and that is R E L I-
29 A G E N E, and they are located in New Orleans.

1 Q. Was the letter addressed to any particular person
2 at that laboratory?

3 A. The letter was addressed to Anne Montgomery, who is
4 an associate director of the laboratory, and she is in charge
5 of the forensic part of the laboratory.

6 BY MR. LUMUMBA: Thank you. I have no further
7 questions.

8 BY MR. EVANS: Your Honor, may I have this
9 document marked for identification?

10 BY THE COURT: Yes, sir.

11 (GENTEST REPORT DATED 12/23/96 WAS MARKED AS
12 STATE'S EXHIBIT S-98 FOR IDENTIFICATION.)

13 (Exhibit S-98 for identification shown to
14 Counsel opposite.)

15 CROSS-EXAMINATION BY MR. EVANS:

16 Q. Okay, Ms. Haller, I will hand you Exhibit 98 and
17 ask you to examine this and tell us if you can identify what
18 that is?

19 A. State's Exhibit 98 for identification is a
20 laboratory report from GenTest Laboratories which is what
21 Reliagene used to be known as, and I don't remember exactly
22 when they changed their name. But they were previously known
23 as GenTest. They are now known as Reliagene. And this is a
24 laboratory report from them dated December 23rd, 1996. And
25 it has the Crime Laboratory case number J96-3536-01C which is
26 the Crime Laboratory case number that was assigned to this
27 case. It is two pages of their report.

28 Q. All right, does that report basically, the test
29 that was done on the clothing that Mr. Lumumba was asking you

1 about?

2 A. Yes. This is the report where they are giving
3 their results on the items that I mentioned earlier, the
4 cuttings from the clothing. And also, in addition, they did
5 some work on the known reference samples from the individuals
6 believed to be involved.

7 Q. All right, now what item of the Defendant's
8 clothing was blood found on?

9 BY MR. LUMUMBA: I'm sorry; I didn't hear that
10 question?

11 BY MR. EVANS: What item of the Defendant's
12 clothing was blood found on.

13 BY MR. LUMUMBA: Objection to that question.
14 I don't think this report says any item of the
15 Defendant's clothing--

16 BY MR. EVANS: --She testified to that on
17 direct.

18 BY MR. LUMUMBA: May we approach?

19 BY MR. EVANS: That they determined that there
20 was blood is why they sent it on to GenTest.

21 BY MR. LUMUMBA: May we approach?

22 BY THE COURT: Wait a minute though.

23 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
24 THE JURY AS FOLLOWS:)

25 BY THE COURT: But now y'all are trying to get
26 her to testify from somebody else's report which is
27 what you objected to while ago.

28 BY MR. EVANS: All I asked her about is what
29 item of clothing the blood was found on--

1 **BY THE COURT:** --but you asked her, and that
2 is not in evidence. That report is not in
3 evidence.

4 **BY MR. EVANS:** It's not from the report. I
5 just introduced that for identification. I haven't
6 offered this report.

7 **BY THE COURT:** Well, if it's not from the
8 report, she can testify to it. I thought she was
9 testifying from the report.

10 **BY MR. EVANS:** No, sir.

11 **BY MR. LUMUMBA:** Your Honor, this is the
12 report from New Orleans.

13 **BY MR. EVANS:** See, she found the blood and
14 then she sent it on to New Orleans.

15 **BY THE COURT:** She can testify to anything
16 that she did if she has knowledge. Okay.

17 **END BENCH CONFERENCE.**

18 **BY THE COURT:** I misunderstood.

19 **BY MR. LUMUMBA:** Okay, I misunderstood too. I
20 have no objection to anything that this witness
21 did. My only objection is her testifying from
22 something somebody else did.

23 **BY MR. EVANS:**

24 Q. All right, do I need to repeat the question?

25 A. (Witness nods her head.)

26 Q. What item of clothing did you examine that had, of
27 the Defendant's clothing that had blood on it?

28 A. First off, I didn't perform the examinations. That
29 was done by another analyst in our laboratory and--

1 BY MR. LUMUMBA: I would have to object.

2 BY THE WITNESS: If I could--

3 BY MR. EVANS: --Well, he has gone into
4 everything that was done on this in the Jackson
5 lab.

6 BY THE COURT: She can only testify as to what
7 her personal knowledge is. If she has got personal
8 knowledge, she can testify to it. If she doesn't,
9 she can't.

10 BY MR. EVANS:

11 Q. Do you have personal knowledge? Did you observe
12 the tests that were down there?

13 A. Gosh, I don't remember if I observed it or not, but
14 the reason that I was involved in sending the samples to the
15 private laboratory is because this analyst was on maternity
16 leave, and as the supervisor of the section, I picked up the
17 request as it came in instead of making it wait until she got
18 back from maternity leave.

19 Q. All right. Well, let me ask you this, and this may
20 simplify it. I am trying to basically go back over what you
21 said. Correct me if I am wrong. Is it the policy that y'all
22 do testing to determine if there is blood on a subject or
23 object before you would send it to GenTest for DNA?

24 A. Yes, that is policy.

25 Q. So that is the policy?

26 A. Yes.

27 Q. So according to your policy, you would have had to
28 determine there was blood there before you would have sent it
29 on for DNA testing?

1 A. We would have examined the item of evidence to
2 determine if there were any possible blood stains, and if any
3 blood stains or possible blood stains were collected from
4 those items and we were requested to, we would then send
5 those to the private laboratory.

6 Q. But whether there was blood on there or not, you
7 have no personal knowledge of when these clothes were
8 obtained or where they were obtained from, do you?

9 A. No, sir. Other than I believe it is reflected on
10 our evidence submission form.

11 Q. Do you have that with you?

12 A. No, sir. I don't have the complete file with me.
13 I don't have a copy of that evidence submission form.

14 Q. Okay, but it would be on the one that the officer
15 submitted to the Crime Lab; is that correct?

16 A. Yes.

17 Q. Now on the fingernail scrapings, you have testified
18 that the blood that was found under the fingernail scrapings
19 of Derrick Stewart was his own blood; is that correct?

20 A. Yes, sir. That genetic profile was determined to
21 be consistent with Mr. Stewart.

22 (Pause while Mr. Evans turns on the slide
23 projector and finds a slide. The overhead lights
24 in the front of the courtroom were cut off.)

25 Q. Ms. Haller, as an expert, I would like for you to
26 take into consideration that there has been testified that
27 this pool of blood where the cap is was where the fourth
28 victim would have been laying in the store. Assuming that
29 this was, since it was the fourth victim where the body of

1 Derrick Stewart was laying, is there anything inconsistent
2 with finding his own blood under his fingernails if he was
3 laying in a pool of his own blood?

4 A. No, sir.

5 (Pause while projector is cut off and State's
6 Counsel confer briefly.)

7 BY MR. EVANS: Your Honor, we would go ahead
8 and submit the report into evidence.

9 BY MR. LUMUMBA: No, we will be bringing in
10 the expert to testify to the report, Judge, so I
11 would object to putting it in before she gets here
12 so she can explain it.

13 BY THE COURT: Okay.

14 BY MR. EVANS: Nothing further of this
15 witness.

16 REDIRECT EXAMINATION BY MR. LUMUMBA:

17 Q. Just a short question, Ms. Haller, and then we are
18 going to let you go. Basically, you examine whatever you
19 find to determine what its origin if you can; is that right?
20 When I say whatever you find, whatever appears to have
21 relevance as far as the serological examinations that you are
22 doing; is that correct?

23 A. I guess that kind of sums it up in a nutshell. We
24 are submitted items of evidence, requested to examine them.
25 Any blood stains that are collected from them are then
26 further tested if it's deemed necessary.

27 Q. Okay. Now also I understand that what you do with
28 the clothing that was submitted; what you submitted is what
29 possibly could have been blood stains; is that correct?

1 A. That's correct, and I was trying to make that
2 statement earlier. These samples that were collected from
3 the clothing which I forwarded to the private laboratory--

4 BY MR. EVANS: --Your Honor, I-- excuse me,
5 Ms. Haller. I hate to even object because I wanted
6 all this in, but if I'm not going to be able to go
7 into it, it's not proper for him to go into
8 something that she didn't test herself. If he is
9 going to be entitled to do it, I would like to be
10 able to go back into it with her.

11 BY THE COURT: She has got no personal
12 knowledge. She can't testify to it.

13 BY MR. LUMUMBA: I think what he asked her,
14 and I am just following up on, is the policy about
15 possible blood stains.

16 BY THE COURT: You can ask her about the
17 policy.

18 BY MR. LUMUMBA: Okay.

19 BY MR. LUMUMBA:

20 Q. You were about to explain. Go ahead.

21 A. We send-- now let me back up and just kind of
22 clarify some things here. The first thing that we do on an
23 item of evidence is examine it for the presence or absence of
24 possible blood stains, reddish colored stains. If an item
25 of clothing has been washed, we then have to use another
26 screening technique to help us locate any possible blood
27 stains because the reddish color is going to have been washed
28 out. So in either instance if we collect a sample from an
29 item of clothing and we are requested to send it off for DNA

1 testing, we will do so, and that is what we were doing in,
2 prior to April of '97 for DNA testing.

3 Q. So according to the policy, you may send things
4 which you think are possibly blood stains which possibly
5 might not be blood stains; is that correct?

6 A. That's correct, and the reason that we stop our
7 examinations at that point is because if an item has been
8 washed and we are having to use this screening technique to
9 help us even locate the sample, there is not going to be
10 enough sample for us to test further to determine if it's
11 human blood. We would be consuming the sample. So we
12 preserve the sample for the DNA test.

13 BY MR. LUMUMBA: I have no further questions.

14 BY THE COURT: Is she finally excused?

15 BY MR. LUMUMBA: As far as I am concerned,
16 Judge, yes.

17 BY MR. HORAN: As far as the State is
18 concerned.

19 BY THE COURT: You are free to go, ma'am.

20 WITNESS EXCUSED.

21 BY THE COURT: Who do you have next?

22 BY MR. HORAN: The State calls Chief Johnny
23 Hargrove.

24 BY THE COURT: Okay, let me see Mr. Freelon
25 and Mr. Horan up here. The rest of you can come if
26 you like, but they are the two that is going to be
27 interested.

28 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
29 THE JURY AS FOLLOWS:)

1 **BY THE COURT:** Judge Walker's law clerk did
2 that for me.

3 (Hands Counsel a note.)

4 END BENCH CONFERENCE.

5 BY MR. EVANS: Your Honor, they have got our
6 witnesses downstairs.

7 **BY THE COURT:** I gathered that's what the deal
8 was.

9 BY MR. HORAN: I'm going to get them to put
10 some out in the hallway so it won't take so long if
11 that is all right with the Court. We can get them
12 somewhere up the stairs.

13 **BY THE COURT:** You might check with them.
14 There is one of these courtrooms open now. Number
15 two, I believe is open. Check about that. I tell
16 you what; check about, see if we can use-- I don't
17 know; there may be a Judge in that courtroom, but
18 at least as far as this afternoon. Well, I tell
19 you what; let's just wait until Ron gets back. He
20 will know.

21 (The Bailiff returned and conferred with the
22 Court out of the hearing of the Court Reporter.)

23 **JOHNNY HARGROVE,**

24 a black male called to testify as a witness by the State of
25 Mississippi, having first been duly sworn, testified as
26 follows, to-wit:

27 **BY THE COURT:** Chief, have you been served-- I
28 mean sworn?

29 BY THE WITNESS: Yes, sir.

1 **BY THE COURT:** State your name for the
2 record.

3 **BY THE WITNESS:** Johnny Hargrove.

4 **DIRECT EXAMINATION BY MR. HORAN:**

5 Q. Mr. Hargrove, you are Chief of Police for the City
6 of Winona, Mississippi; is that right?

7 A. Yes, sir.

8 Q. How long have you been Chief of Police?

9 A. Five years.

10 Q. I want you to do something for me. If you were
11 going up Highway 55 and you got to the Winona exit, would you
12 tell this jury how you would get from the 55 exit, the Winona
13 exit to the Tardy Furniture Store. How would you proceed,
14 the quickest way to get there?

15 A. The quickest way to get there? You would turn off
16 on 55, make a right, get on to 82, go about a quarter of a
17 mile, take another right on Middleton Road; go another
18 quarter of a mile to 51, take a right; go down about a
19 quarter to the red light. There would be Summit and 51, take
20 a left. Go down about another quarter of a mile, and then
21 you take another right, and Tardy's would be down there on
22 the right.

23 Q. It is generally in the downtown area of Winona; is
24 that right?

25 A. Yes, sir.

26 Q. And it's on Main Street; is that right?

27 A. Yes, sir.

28 Q. On or Front Street, whatever?

29 A. Front Street.

1 Q. Front Street. I want to show you a picture that
2 has been marked for identification purposes as State's
3 Exhibit-- well, it has been introduced in evidence as State's
4 Exhibit number 1. Is that the front of the Tardy Furniture
5 Store building?

6 A. Yes, sir.

7 Q. Okay. And on July the 16th of 1996, did you
8 respond to a call to go to the Tardy Furniture Store?

9 A. Yes, I did.

10 Q. In Winona?

11 A. Yes, I did.

12 Q. Do you remember approximately what time you
13 actually arrived at the Tardy Furniture Store?

14 A. About 10:21.

15 Q. 10:21?

16 A. In the morning.

17 Q. And how long after you received that call-- how
18 long did it take you to get there? Do you remember where you
19 were when you received the call?

20 A. Coming off of Greensboro.

21 Q. Okay, and how far would that be from Tardy
22 Furniture?

23 A. Not far. It's right up from the police department.

24 Q. Okay, and the police department is how far from
25 Tardy Furniture?

26 A. About--

27 Q. Quarter of a mile maybe? At the most?

28 A. Somewhere in there, about.

29 Q. Okay, it took you a minute or so to get to Tardy

1 Furniture?

2 A. Yes, sir.

3 Q. After you arrived there at Tardy Furniture Store,
4 would you tell the jury and the Court what you did?

5 A. I drove up in front of the store. I got out of the
6 vehicle, went to the front door, opened the front door and
7 went inside.

8 Q. What happened then?

9 A. About from here to that door back there I seen Ms.
10 Tardy laying in the floor.

11 Q. Okay, that is approximately 45 feet maybe?

12 A. Somewhere in there.

13 Q. Had you been in Tardy Furniture before?

14 A. Yes, sir.

15 Q. On numerous occasions, other occasions?

16 A. Right.

17 Q. Would you describe, you say you saw Ms. Tardy.
18 What was her condition at that time?

19 A. She was laying on her stomach face down.

20 Q. After you saw Ms. Tardy, would you tell the Court
21 and this jury what you did?

22 A. After I seen her laying down back there, I
23 proceeded further.

24 Q. Okay, would you tell the Court and the jury what
25 you saw after you proceeded on into the store?

26 A. Okay, after I proceeded further, when I got close
27 to her, I glanced to my right, and I seen the other three
28 people.

29 Q. Okay, would you tell the Court and the jury who you

1 saw?

2 A. I seen Stewart.

3 Q. Is that Derrick "BoBo" Stewart?

4 A. Yes, sir.

5 Q. Did you know him at that time?

6 A. No, I did not.

7 Q. Did you come to know him as Derrick "BoBo" Stewart?

8 A. Yeah.

9 Q. Would you describe his condition?

10 A. He was laying with his face in a puddle of blood
11 gasping for breath.

12 Q. After you saw Mr. Stewart, did you notice anyone
13 else in the store?

14 A. Yeah, I seen Robert Golden and Ms. Rigby.

15 Q. That would be Carmen Rigby?

16 A. Yes, sir.

17 Q. And did you know Robert Golden prior to this day?

18 A. Yes, sir.

19 Q. How long had you known Robert Golden?

20 A. Been knowing him a long time. When my brother come
21 home, he used to come over to my mother's house and eat.

22 Q. Would you describe, if you can, Chief, the
23 condition of Mr. Golden at the time you saw him. Did he
24 appear to be dead or alive?

25 A. He appeared to be dead.

26 Q. Would you describe the condition of Carmen Rigby at
27 the time that you saw her?

28 A. She appeared to be dead too.

29 Q. So the only individual in the store that seemed to

1 be alive or appeared to be alive at that time was Derrick
2 "BoBo" Stewart; is that correct?

3 A. Yes, sir.

4 Q. What did you do at that time, Chief Hargrove?

5 A. After I seen those, those three laying over there,
6 I unsnapped my weapon and backed back out of the store.

7 Q. Okay, did you pull your weapon out?

8 A. (Witness nods his head) And started backing back
9 out of the store.

10 Q. And you backed out of the store. Did you notice
11 anything unusual about the area surrounding where Mr. BoBo
12 Stewart was?

13 A. No, sir.

14 Q. Did you see any footprints?

15 BY MR. LUMUMBA: Leading, Judge. Objection.

16 BY THE WITNESS:

17 A. I didn't see the footprint until--

18 BY THE COURT: Well, it is asked and answered.

19 BY MR. HORAN:

20 Q. Okay, all right. I may, I need to do a sequence of
21 time. You backed out of the store; is that right?

22 A. Yes, sir.

23 Q. What did you do once you, after you backed out of
24 the store?

25 A. Went back to my patrol vehicle.

26 Q. Okay, where were you parked in relationship to the
27 front of Tardy's store?

28 A. I went in front of the store.

29 Q. Did you see anyone leave or enter the store--

1 A. No, I did not.

2 Q. --after you backed out?

3 A. No, I did not.

4 Q. Did you make sure that that did not happen?

5 A. Yes, sir.

6 Q. Basically at that point in time, did you secure
7 that scene?

8 A. What I did, I picked up my mike, and I called for
9 backup, and I called for MedStat, and finally I called Doug's
10 office and the investigator from Greenwood.

11 Q. You say Doug Evans. The DA's office?

12 A. Yes, sir.

13 Q. And did certain individuals as a result of your
14 request, did they show up there at Tardy Furniture?

15 A. Yes, sir.

16 Q. Did you secure the scene until those individuals
17 showed up?

18 A. I started securing the scene after MedStat arrived
19 and they got Stewart, and that's when I seen the footprint.

20 Q. Okay, MedStat arrived. How many minutes after you
21 went outside did MedStat show up? That is the ambulance
22 service, I assume?

23 A. Ambulance service.

24 Q. Do you remember what ambulance?

25 A. MedStat.

26 Q. Okay, what I mean is who was in charge of the
27 EMT's, emergency technicians?

28 A. Barry Eskridge in charge of it.

29 Q. Okay, and you know Mr. Eskridge?

1 A. Yes, sir.

2 Q. And you proceeded back into the store with him?

3 A. I went back in. I went back in with the other two
4 EMT's.

5 Q. Did you notice anything about the area around Mr.
6 Stewart's body at that time?

7 A. Yeah, that's when I seen the footprint.

8 Q. Did you take--

9 BY MR. LUMUMBA: Judge, I want to make--

10 BY MR. HORAN: --I'm sorry.

11 BY MR. LUMUMBA: --an objection to what seems
12 to be continuing leading questions. I mean, Did
13 you notice anything around the area.

14 BY MR. HORAN: That is not suggesting an
15 answer.

16 BY MR. LUMUMBA: Well, it is suggesting
17 something was around that area. I mean what did he
18 notice in the store is the appropriate question.
19 That is my objection.

20 BY THE COURT: The objection is overruled. Go
21 ahead.

22 BY MR. HORAN:

23 Q. You were describing that you noticed footprints
24 there around Mr. Stewart's body?

25 A. Yes, sir.

26 Q. Did you take any steps to make sure that they were
27 preserved or the integrity of those footprints were not
28 disturbed in any way?

29 A. Yes, sir.

1 Q. What did you do?

2 A. I was watching them until they got his body on the
3 gurney, and then they moved out, and all of us went out at
4 the same time.

5 Q. So you made sure that they were not disturbed in
6 any way?

7 A. Yes, sir.

8 Q. Did you see Sam Jones there that morning?

9 A. Sam wasn't in the store. No, he was out there up
10 by Coast to Coast.

11 Q. Okay, he was at Coast to Coast. Where is Coast to
12 Coast located in reference to Tardy Furniture?

13 A. It's just right up the, it's about a building in
14 between them. When I was roping the crime scene off, I seen
15 him.

16 Q. Did you talk to Mr. Jones that morning?

17 A. When I was roping the crime scene off, I looked
18 down there at his feet, his shoes there.

19 Q. You had information that Mr. Jones had been in the
20 store then?

21 A. Yes, sir.

22 Q. Did the shoes or the boots that he had on, did they
23 match the print that you saw in the blood?

24 A. He had some shoes on. They, I believe they are the
25 same shoes he has got on now. They appear to be what he has
26 got on now.

27 Q. Did they appear to be the same as you saw in the
28 bloody footprint?

29 A. No.

1 Q. And the Tardy Furniture Store is located in Winona,
2 Mississippi; is that right?

3 A. Yes, sir.

4 BY MR. HORAN: I tender.

5 BY MR. LUMUMBA: Thank you, Judge. May I
6 proceed?

7 BY THE COURT: Yes, sir.

8 CROSS-EXAMINATION BY MR. LUMUMBA:

9 Q. Good afternoon.

10 A. How ya doing.

11 Q. Chief Hargrove?

12 A. Yes.

13 Q. Now at this time you are the Chief of the Winona
14 Police Department?

15 A. Yes, sir.

16 Q. Okay, just a couple of questions, Mr. Hargrove,
17 Chief Hargrove. First of all, as to your familiarity with,
18 you said you knew Mr. Golden, did you?

19 A. Yes, sir.

20 Q. You know a lot of people there in town; would that
21 be correct to say?

22 A. Yes, sir.

23 Q. In fact, you are also friends with the Curtis
24 Flowers family; is that correct?

25 A. Yes, sir, with his father.

26 Q. Okay, and you have been friends for quite some
27 time; is that correct?

28 A. Yes, sir.

29 Q. Okay, now actually you didn't see-- did you see Mr.

1 Flowers there that day at all?

2 A. No, sir.

3 Q. Okay, so you never saw him at all?

4 A. No, sir.

5 Q. And, okay, now so you really don't have any
6 personal knowledge of what happened or how it happened or who
7 did it; is that correct?

8 A. No, sir.

9 Q. Okay. And that remains the truth regardless of the
10 fact that Golden was a good friend of yours and regardless of
11 the fact that Mr. Archie Flowers was a good friend of yours;
12 is that correct?

13 A. Golden is a personal friend of my brother.

14 Q. Right. Of your brother's?

15 A. And Flowers, Archie is my friend.

16 Q. And Flowers is your friend?

17 A. Yes, sir.

18 Q. Okay, but none of those two things changes the fact
19 and none of the blood on the floor or anything changes the
20 fact you really don't know what happened in there; is that
21 true?

22 A. No, sir. Yes, sir.

23 Q. Okay. Now let me ask you this. Did you see, I
24 think you answered this question already. You didn't see Sam
25 in the store?

26 A. No, sir. I did not.

27 Q. So you don't know when Sam came in of your personal
28 knowledge, do you?

29 A. I don't know when--he -- I don't know when he went

1 in and when he came back out. He was out there on the
2 walkway by Coast to Coast when I got there--

3 Q. --All right, and you--

4 A. --when I was roping it off.

5 Q. I'm sorry. I didn't mean to cut you off. Go
6 ahead.

7 A. He was out there on the walkway by Coast to Coast
8 when I was roping off the crime scene.

9 Q. Okay, and did you see a Mr. Collins in the area?
10 Do you know a gentleman, they call him-- I think his name is
11 Charles Collins, but they call him Porky Collins. Did you
12 see him at all?

13 A. No, sir. I did not.

14 Q. Okay. If you said, I don't think I caught it.
15 Were you the first officer at the scene?

16 A. Yes, sir.

17 Q. Okay, and do you know what time you actually were
18 notified to come?

19 A. It was about 10:21 when I was notified.

20 Q. Okay, but you don't know what actually time the
21 bodies were discovered yourself personally?

22 A. No, sir.

23 Q. Okay, and is it your understanding that-- well, I
24 don't want to ask you any hearsay. But let me ask you this.
25 You didn't notice the print until after the ambulance
26 personnel left. Would that be a correct statement?

27 A. I noticed it when we went back in, and they were
28 over there with Stewart's body.

29 Q. I'm sorry?

1 A. When they were getting Stewart, putting him on the
2 cot, I noticed it then.

3 Q. Okay. This has been obviously a long time ago in
4 1996; is that correct?

5 A. Yes, sir.

6 Q. Okay, and you had in a hearing that was held in the
7 case some time, and I think you did have an opportunity to
8 testify once; is that correct?

9 A. Yes.

10 Q. Okay, I just want you to see to refresh your
11 recollection if you could look at what appears to be your
12 testimony. And I'm referring to page 275, 275 of the
13 transcript, and I'm going to ask you to take a look here at--
14 and I'm looking, showing you page 275, and I am asking to
15 direct your attention here, but of course--

16 A. Where about?

17 Q. Right here where it says, "Now." Do you see where
18 I'm saying? Okay, but you can read anything else you want
19 to; okay?

20 A. Uh-hum. Yes, sir.

21 Q. Okay. All right. And let me just see if this, if
22 this is what you were asked at the hearing and this is what
23 you said. "Now the track, did you notice it when you first
24 went in there, or did you notice it after the ambulance
25 personnel left?" And here it says your answer was, "After
26 they left." Is that what this says?

27 A. That wasn't the process. When they were putting
28 him on the gurney, when they were fixing to move him, that's
29 when I seen it, the footprint.

1 Q. Okay, but at this time in this hearing you said you
2 noticed it after they left. Is that what you said?

3 A. It was when we went back in when I noticed it, when
4 all three of us went back in.

5 Q. Okay, I'm not arguing with that. I just wanted to
6 see what was said here at the hearing. Is that what was
7 said? After they left. That was your answer?

8 A. My answer is when all three of us went back in, I
9 noticed the footprint when they were putting him on the cot
10 fixing to get ready to leave.

11 Q. Okay, could you do me a favor, please, Chief. I
12 want you, could you start here at line 12 and read to us and
13 the ladies and gentlemen of the jury everything from line 12
14 down to line 20. Line 12 to line 20. Could you please do
15 that for me?

16 A. "Now the track, did you notice it when you went in
17 there, or did you notice it after the ambulance personnel
18 left?"

19 "After they left."

20 "After they left?"

21 "Yes, sir."

22 "And did you notice the track or shoe print, in
23 other words?"

24 "Yes, sir."

25 Q. So at least there, and I'm not-- you were there; I
26 wasn't. So I'm not trying to put words in your mouth, but I
27 am just saying at that particular hearing your recollection
28 at that time or at least what you testified was that you
29 noticed it after they left. Isn't that what it says?

1 A. That's what it says, yes, sir.

2 Q. Okay. Chief Hargrove, you lived in the Winona
3 community around this time and subsequent to this time; is
4 that right?

5 A. Yes, sir.

6 Q. Okay. It would be safe to say that you are-- would
7 it not be your-- you do check, you know, you do, are involved
8 in arrests and prosecutions and things of that nature. Is
9 that correct?

10 A. Yes, sir.

11 Q. Okay, would it be safe to say that on 7-16-96,
12 first of all, I think you have already said you didn't see
13 Mr. Flowers that day, did you?

14 A. No, sir.

15 Q. Okay, and on that day would it be safe to say that
16 he had never been convicted--

17 BY MR. HORAN: --Objection, Your Honor.

18 BY MR. LUMUMBA: Can I finish?

19 BY THE COURT: Wait a minute. Come up here.

20 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
21 THE JURY AS FOLLOWS:)

22 BY THE COURT: What are you getting ready to
23 ask?

24 BY MR. LUMUMBA: I am just going to ask him if
25 he had ever been convicted of other crimes?

26 BY MR. HORAN: Your Honor, he knows that is
27 improper.

28 BY THE COURT: You can't ask that question.

29 END BENCH CONFERENCE

1 BY MR. LUMUMBA:

2 Q. Immediately after the Tardy Store incident, there
3 were a number of signs up offering rewards; is that correct?

4 BY MR. HORAN: Your Honor, I object to that
5 line of questioning until he can prove that it's
6 relevant in any way.

7 BY MR. LUMUMBA: Judge, I certainly intend to
8 connect it up, but I think it is already relevant
9 because if that was something that was being done,
10 then I think it is something that doesn't help
11 but--

12 BY MR. HORAN: Your Honor, we don't need to
13 argue in front of the jury.

14 BY MR. LUMUMBA: We can do it-- I would like
15 to argue if the Court has -- I am just asking him a
16 question if it was done. I am just asking if there
17 were some posters. Certainly, it is harmless.
18 Certainly it is more probative than prejudicial.

19 BY MR. HORAN: Your Honor, it has got to be
20 proven to be relevant. At this point in time--

21 BY THE COURT: --Ladies and gentlemen, I need
22 to hear this outside y'all's presence. I'm going
23 to ask you to go to the jury room for just a
24 minute.

25 (JURY LEAVES THE COURTROOM.)

26 BY THE COURT: State the nature of your
27 objection, Mr. Horan.

28 BY MR. HORAN: Your Honor, I object on the
29 grounds of relevancy at this point in time with

1 this particular witness. If he is trying to
2 impeach Mr. Hargrove because Mr. Hargrove may have
3 wanted some of the reward money, it would be
4 relevant. But at this point in time with this
5 particular witness, it has not been proven to be
6 relevant to anything.

7 **BY THE COURT:** Well, why does it have any
8 probative value, the fact that it was done? I mean
9 it may be developed by other witnesses. I mean I--

10 **BY MR. LUMUMBA:** --Okay, well, here is the
11 reason it has probative value, the fact that it was
12 done. First of all, I think--

13 **BY THE COURT:** --Well, I wasn't arguing with
14 you right now. I was arguing with him.

15 **BY MR. HORAN:** Your Honor, at the last trial,
16 the last time we tried this matter the Court stated
17 to counsel, previous counsel for the Defendant that
18 if they at some point in time could prove it was
19 relevant, they could get into that matter through a
20 witness that showed bias or interest or something
21 like that. But until that has been proven, it's
22 not relevant. It's just to inflame, it is just
23 prejudicial to the State. It has absolutely no
24 relevant value at all other than--

25 **BY THE COURT:** --How is it prejudicial to the
26 State in any way?

27 **BY MR. HORAN:** Your Honor, if they put that in
28 and they can't prove that any witness had knowledge
29 of the reward, then that is before the jury with

1 absolutely no probative value. With this
2 particular witness, it has no probative value.

3 **BY THE COURT:** That objection is overruled.
4 I'm going to let that go in. You can bring them
5 back.

6 **BY THE BAILIFF:** It will be just a minute,
7 Judge.

8 **BY THE COURT:** Okay. Let me see y'all.

9 (CONFERENCE AT THE BENCH WHILE THE JURY WAS
10 STILL OUT AS FOLLOWS:)

11 **BY THE COURT:** I don't know who, who to lay
12 blame. I don't know who did this, but somebody
13 made arrangements for the witnesses to stay at the
14 Holiday Inn where the jury is.

15 **BY MR. HORAN:** Not the State.

16 **BY MR. EVANS:** The Sheriff's Department.

17 **BY THE COURT:** It says Montgomery County. I'm
18 going to bet you it was Chuck.

19 **BY MR. HORAN:** Right.

20 **BY THE COURT:** Yeah, okay. I really don't
21 want that done, and she can make arrangements for
22 them to stay somewhere else, so I'm going--

23 **BY MR. EVANS:** --That is fine with us.

24 **BY MR. FREELON:** At this late date? At this
25 late date it is going to be difficult, but if it
26 has got to be done.

27 **BY MR. LUMUMBA:** Yeah, I agree.

28 **BY THE COURT:** Ms. Ladner says she can do it.
29 I believe she can. And if not, I will take extreme

1 precautions to make sure that they don't co-mingle,
2 but I would rather just move them.

3 BY MR. LUMUMBA: We would too and, Judge,
4 could you let us know if it can't be done?

5 BY THE COURT: Sure. I am going to let you
6 know what we do one way or another.

7 END BENCH CONFERENCE.

8 BY MR. LUMUMBA: We waiting for the jury?

9 BY THE COURT: Yeah. They are kind of hinting
10 that they might want just a minute.

11 JURY RETURNS TO THE COURTROOM.

12 BY THE COURT: We will take a full break here
13 shortly, but I wanted to proceed on for just a
14 little bit.

15 BY MR. LUMUMBA: May I proceed, Judge?

16 BY THE COURT: Yes.

17 CONTINUING CROSS-EXAMINATION BY MR. LUMUMBA:

18 Q. Yes, Chief Hargrove, my question to you before we
19 recessed was were you aware of a reward being offered after
20 this incident occurred?

21 A. Yes.

22 Q. Okay. And was it a fact that it was publicly
23 posted in the newspaper as well as on poles and things of
24 that nature?

25 A. Yes, sir.

26 Q. Okay. Are you familiar with a, with the newspaper
27 called the Winona Times?

28 A. Yes, sir.

29 Q. Okay.

1 BY MR. LUMUMBA: I'm having this marked just
2 for identification.

3 (COPY FROM WINONA TIMES DATED JULY 25, 1996,
4 AND COPY FROM WINONA TIMES DATED JANUARY 16, 1997,
5 WERE MARKED RESPECTIVELY AS DEFENDANT'S EXHIBITS
6 D-3 AND D-4 FOR IDENTIFICATION. COPY OF REWARD
7 POSTER WAS MARKED AS DEFENDANT'S EXHIBIT D-5 FOR
8 IDENTIFICATION, AND ENLARGED COPY OF ARTICLE
9 ENTITLED "SIX MONTHS TODAY" WAS MARKED AS
10 DEFENDANT'S EXHIBIT D-6 FOR IDENTIFICATION.)

11 (Exhibits D-3 through D-6 were shown to
12 Counsel opposite.)

13 BY MR. LUMUMBA:

14 Q. Okay, Chief Hargrove, I am showing you what is
15 marked as Defendant's Exhibit for identification purposes
16 number 5. Do you recognize that?

17 A. Yes, sir.

18 Q. Okay, and what is that if you could tell me?

19 A. It's a poster of a thirty thousand dollar reward.

20 Q. Okay, and that was an offer for reward money for
21 any kind of information leading to the arrest and conviction
22 of a person in this case; is that right?

23 A. Yes, sir.

24 Q. Okay. And that was circulated widely in the
25 community?

26 A. Yes, sir.

27 Q. Would it be safe to say that at one time the reward
28 money was like 8 or 15, and then it went up to 30 at some
29 point?

1 A. I can't recall.

2 Q. You can't recall?

3 A. No.

4 Q. Okay. But you do know that the reward money was
5 offered very early on in the process?

6 A. Yes, sir.

7 Q. Almost immediately?

8 A. Almost after, yes.

9 Q. Okay. Now I would also have--

10 BY MR. EVANS: --Your Honor, if we may to
11 speed things up, we would agree to introduce all of
12 these exhibits into evidence.

13 BY THE COURT: Any objection to that?

14 BY MR. LUMUMBA: I just have one thing,
15 Judge. As far as the posters, reward posters,
16 yeah, certainly. I think that they should be
17 introduced, and I would accept that. As far as we
18 have articles here which will probably have to be
19 redacted because they are newspaper articles, but I
20 have no problems with them coming in for purposes
21 of showing the headlines and the picture which is
22 in the paper.

23 BY MR. EVANS: Your Honor, he is the one that
24 is introducing the articles. If we are going to
25 see part of them, I want to introduce the whole
26 article so the jury can see everything.

27 BY THE COURT: Right, but he hasn't asked that
28 they be introduced. He just asked that they be
29 marked for identification, and all the Chief can do

1 at this point in time is to identify them as to
2 what they are. He cannot testify from him. At
3 such time as he intends to offer them, then we will
4 go back to that objection.

5 BY MR. LUMUMBA:

6 Q. Let me show you also here what we have is a
7 Thursday, January 16. Do you know what that is? Exhibit D-4
8 for identification purposes, do you know what that is?

9 A. It is saying a Winona man is arrested in Texas--

10 BY THE COURT: --You have to speak up, Chief.
11 One, I can't hear you and she can't either.

12 BY THE WITNESS:

13 A. Okay, it is saying Winona native arrested in Texas
14 for Tardy's murders.

15 Q. Okay, what I was actually asking, do you know-- is
16 that a paper? Is that a copy of the newspaper?

17 A. It has got Winona Times at the top.

18 BY THE COURT: Let me explain this to the
19 witness. He is going to ask you to identify, and
20 you just tell what it is. Don't read from it.

21 BY THE WITNESS:

22 A. It's a newspaper.

23 Q. And would that newspaper be the Winona Times?

24 A. Yes, sir.

25 Q. And would that-- and that is D-4; is that correct?

26 A. Yes, sir.

27 Q. And then we have another newspaper here. Was this
28 also a copy of a newspaper of the Winona Times?

29 A. Yes, sir.

1 Q. And this is D-3; is that correct?

2 A. Yes, sir.

3 Q. Okay, it's for identification purposes for the
4 record. And would it appear that Exhibits D-4 and D-6 given
5 the date on them are from the same newspaper?

6 A. January 16th.

7 Q. And that is also on D-6 for identification; is that
8 correct?

9 A. Yes, sir.

10 BY MR. LUMUMBA: At this time, Judge, I have,
11 I am moving for the admission of D-6, and I am
12 moving for the admission of D-5.

13 BY MR. EVANS: Your Honor, we would ask that
14 they all be introduced since he has asked about all
15 of them. We would ask that every one of them be
16 introduced so the jury can see all of them.

17 BY THE COURT: Well.

18 BY MR. LUMUMBA: Well, the question, I think,
19 on the floor right now is whether he has any
20 objection.

21 BY THE COURT: I am going to let in those two
22 that you have asked to be introduced. I will take
23 a look at the others. I haven't even seen them.

24 BY MR. EVANS: Can I have a second to see
25 which ones are introduced and which ones aren't
26 yet?

27 BY THE COURT: Okay. And all that needs to be
28 handed to the Court Reporter.

29 BY MR. LUMUMBA: I'm sorry.

(COPY OF REWARD POSTER PREVIOUSLY MARKED AS
DEFENDANT'S EXHIBIT D-5 FOR IDENTIFICATION AND
ENLARGED COPY OF ARTICLE ENTITLED "SIX MONTHS
TODAY" PREVIOUSLY MARKED AS DEFENDANT'S EXHIBIT D-6
FOR IDENTIFICATION WERE NOW BOTH RECEIVED IN
EVIDENCE.)

BY MR. LUMUMBA:

Q. Chief Hargrove, finally, have you, do you know
Charles Collins or Porky Collins?

A. Yes, sir.

Q. Okay. Were you ever present during any time that
he was being shown any kind of a picture photographic lineup
or anything of that nature?

A. No, sir. I don't recall.

Q. Were you ever present at any time that he was being
shown any kind of live lineup or anything?

A. No, sir.

Q. Were you present on the, were you ever present when
he was being interviewed on any particular day by the police?

A. No.

Q. And that would include the 16th itself. You were
not present when he was being interviewed at that time, were
you?

A. No, sir.

BY THE COURT: Anything further?

BY MR. LUMUMBA: Excuse me one second, Judge.

(Defense Counsel confer briefly.)

BY MR. LUMUMBA: I have no further questions
of this witness, Judge.

1 REDIRECT EXAMINATION BY MR. HORAN:

2 Q. Chief Hargrove, your testimony here is that you
3 noticed footprints in the store at the point in time when you
4 went back in the store with the EMT's; is that right?

5 A. Yes, sir.

6 Q. Did you take any steps to see whether or not they
7 may have, in fact, made those prints?

8 A. I looked at their foot. They had on some boots.

9 Q. Was it consistent or not consistent with the
10 footprint that you saw in the blood?

11 A. It was not consistent.

12 Q. And as far as the introduction, the exhibits, with
13 the reward, that was not a reward posted by the Winona Police
14 Department, was it?

15 A. No, sir.

16 Q. Or any other-- to your knowledge, any other law
17 enforcement agency; is that right?

18 A. No, sir. It wasn't.

19 Q. And you don't have of your own personal knowledge
20 who may have known about any of the reward or anything like
21 that?

22 A. No, I do not.

23 (State's Counsel confer briefly.)

24 Q. You weren't wearing any shoes that were consistent
25 with the track made in the blood, were you?

26 A. No, sir.

27 BY MR. HORAN: No further questions.

28 BY THE COURT: Is he finally excused, or do
29 y'all want him to return to the witness room?

1 BY MR. EVANS: Yes, sir.

2 BY MR. HORAN: He is excused as far as the
3 State is concerned.

4 BY MR. LUMUMBA: That is correct too, Judge.
5 We have no further questions for--

6 BY THE COURT: Chief, you are finally
7 excused. You may go or you may stay in the
8 courtroom if you would like.

9 WITNESS EXCUSED.

10 BY THE COURT: Okay, who will you have next?

11 BY MR. HORAN: Sam Jones.

12 BY THE COURT: Mr. Jones, have you been sworn
13 today?

14 BY MR. JONES: Yes.

15 BY THE COURT: All right, have a seat up
16 there, please, sir.

17 BY MR. HORAN: May I proceed, Your Honor?

18 BY THE COURT: Yes.

19 SAM JONES,

20 a black male called to testify as a witness by the State of
21 Mississippi, having first been duly sworn, testified as
22 follows, to-wit:

23 DIRECT EXAMINATION BY MR. HORAN:

24 Q. Please state your name for the record, if you
25 would.

26 A. Name and address?

27 Q. No, just your name right now, Mr. Jones.

28 A. Sam Jones, Jr.

29 Q. Sam Jones, Jr.?

1 A. Yes.

2 Q. Mr. Jones, where do you live?

3 A. Winona, Mississippi.

4 Q. What is your address in Winona, Mr. Jones?

5 A. 302 Harper Street.

6 Q. Were you living there on July the 16th of 1996?

7 A. Yes, sir. I was.

8 Q. Okay. I want to direct your attention to that
9 particular date if I could, Mr. Jones. Do you remember going
10 to Tardy Furniture that day?

11 A. Yes.

12 Q. For what purpose did you go to Tardy Furniture?

13 A. I went down there to show them how to load a truck
14 and was going with them on a delivery and show them how to
15 unload it.

16 Q. Had you worked at Tardy Furniture in the past prior
17 to July the 16th, 1996?

18 A. Yes, I have worked there.

19 Q. How long did you work there, Mr. Jones?

20 A. I worked there 50 years up until I retired in 65,
21 when I become 65 years of age.

22 Q. Yes, sir. And do you remember about what year that
23 was that you retired from Tardy Furniture?

24 A. Close as I can remember, let's see. (Witness takes
25 out note pad.) I partially retired in 1992.

26 Q. Okay, did you stay in contact with the Tardys after
27 that date?

28 A. Yes.

29 Q. And did you go to their store on occasions?

1 A. On Thursday?

2 Q. No, on different occasions did you--

3 A. --on different occasions. See I worked part time
4 for them. I take care of repairs for them after I retired.
5 I partially retired, and then I take care of repairs for
6 them.

7 Q. Okay.

8 A. Yes, sir.

9 Q. Who summonsed you down to the store on July the
10 16th of 1996?

11 A. Ms. Tardy.

12 Q. Okay, you talked with her on the phone?

13 A. Yes.

14 Q. Okay, did you know Robert Golden at that time?

15 A. Yes.

16 Q. Did you know that Mr. Golden had started work at
17 the Tardy Furniture Store?

18 BY MR. LUMUMBA: Judge.

19 A. Had started to work--

20 BY THE COURT: --Just a minute, Mr. Jones.

21 BY MR. LUMUMBA: The questions are leading.

22 BY THE COURT: That is a leading question.

23 BY MR. HORAN: I will rephrase the question.

24 BY MR. HORAN:

25 Q. For what purpose did you go to Tardy Furniture
26 Store that morning?

27 A. To show them-- see, she had some young fellows
28 there, and she wanted me to train them how to load a truck
29 and then go with them and show them how to unload it, help

1 them get it in the house.

2 Q. Okay, did you know one of the young fellows that
3 she had hired?

4 A. Oh, yes, sir. I knew him.

5 Q. Who was that?

6 A. Robert Golden.

7 Q. How did you know that Ms. Tardy had hired Mr.
8 Golden?

9 A. Well, she told me that night. She called me that
10 night too. See, she called me the night before that morning,
11 before the 16th. She called me that night, and he had come
12 by. I think he had hoed for her some, but he come by my
13 house at night and was asking me to help him get the job.

14 Q. Did you do that?

15 A. Yes, I helped him.

16 Q. So you helped him get the job at Tardy Furniture?

17 A. Yes.

18 Q. And he was to start the next morning?

19 A. He was going to start the next morning.

20 Q. And you received another call from Ms. Tardy that
21 next, on the 16th?

22 A. That's right. The next morning.

23 Q. As a result of that call, did you go to Tardy
24 Furniture?

25 A. Oh, yes. I went down there.

26 Q. Could you tell the Court and the jury what happened
27 once you arrived at the Tardy Furniture Store in your own
28 words, please, sir.

29 A. After I arrived at the store?

1 Q. Yes, sir.

2 A. I got out of my truck, and I locked it and went
3 in. I walked back about halfway of the store, and I heard
4 this noise, somebody trying to get their breath or something,
5 struggling with their breath. And so I looked all around at
6 first to see, to see what it was. I didn't see nobody, but
7 then I walked a little further, and I thought, I said, "Well,
8 I don't see nobody." See, I was looking up over the
9 furniture there. I thought they would be standing up, you
10 see. But I walked a little further, and then I could see
11 it. I could see BoBo's head was sticking about that far out
12 in the aisle. See, he was on the floor there.

13 Q. Mr. Jones, I want to hand you a copy of a
14 photograph. Tell me whether or not you can identify it.

15 (Shows photographs to Mr. Lumumba.)

16 BY MR. HORAN: Do you have an objection?

17 BY MR. LUMUMBA: We don't have an objection to
18 that photograph. Is that in evidence?

19 BY MR. HORAN: I have not introduced it yet.

20 BY MR. LUMUMBA: Okay, I have no objection to
21 it.

22 BY THE COURT: All right, do you want to go
23 ahead and admit it?

24 BY MR. HORAN: Yes, sir, please.

25 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S
26 EXHIBIT S-44 FOR IDENTIFICATION WAS NOW RECEIVED IN
27 EVIDENCE.)

28 BY MR. HORAN:

29 Q. I hand you State's Exhibit number 44. Can you tell

1 me whether or not you have ever seen that individual before
2 in that photograph?

3 A. That's him.

4 Q. That is who?

5 A. BoBo.

6 Q. BoBo Stewart?

7 A. (Witness nods his head.)

8 Q. Is that the young man that you saw laying in the
9 floor of Tardy Furniture Store that morning?

10 A. That's the one was laying in the floor.

11 Q. Would you describe his condition for the benefit of
12 the jury and the Court, please, sir. What was his condition
13 at that time?

14 A. His condition was pretty bad. It wasn't clear like
15 that picture.

16 Q. I understand.

17 A. I can look at that picture and tell it's him, but
18 it wasn't clear like that picture because every time his
19 heart would beat see, blood would run over, was coming out
20 over his eyes. His eyes was open. Blood run over his eyes,
21 and that's what I noticed when I bent over him. His eyes, he
22 never would bat his eyes.

23 Q. Did you--

24 A. --but I could tell, that's the picture there.
25 That's him.

26 Q. Did you see the individual in the store that came
27 to your residence the night before about the job? Did you
28 see him in the store?

29 A. Yes, sir.

1 Q. And who was that individual? Was that Robert
2 Golden?

3 A. That was Robert Golden.

4 Q. I want to hand you a photograph that has been
5 marked and introduced into evidence as State's Exhibit number
6 26. Is that a photograph of the condition that you saw Mr.
7 Golden at the time you entered the store?

8 A. No, sir. It wasn't.

9 Q. What is different about it?

10 A. What is different about it, he was, when I saw him,
11 he was sitting, leaning up against the counter like this.
12 This hand, his left hand was on the floor. His right hand
13 was across here.

14 Q. Okay, was he sitting up, or was he on the floor?

15 A. He was sitting up back against the counter, and he
16 had his right hand was laying up here, and his left hand was
17 on the floor.

18 Q. Okay.

19 A. Flat on the floor there.

20 Q. Okay, is that Mr. Golden though? Do you remember
21 seeing him? I know you may not be able to see his face, but
22 does that appear to be Mr. Golden?

23 A. It seems to be, but I can't see his face.

24 Q. I will show you another exhibit. State's Exhibit
25 number 27.

26 A. That's him there.

27 Q. Okay. Mr. Jones, did it appear that Mr. Golden was
28 alive or dead at the time that you saw him. Could you tell
29 whether or not he was alive or dead? Mr. Golden.

1 A. Repeat the question again.

2 Q. Did it appear to you that Mr. Golden was alive or
3 dead at the time that you saw him?

4 A. He was, he appeared to be dead. Yes.

5 Q. Okay. And you testified a few moments ago that you
6 saw Bertha Tardy. Where did you see her in the store?

7 A. Well, after I looked at Mr. Golden, I turned around
8 again and looked at BoBo. And just as I raised up to go get
9 help for him because I figured the rest of them was dead-- I
10 hadn't seen Ms. Tardy. But I raised up to go get help for
11 him, and when I raised up, well, I just, I was turning
12 around, and I glanced out in the aisle, and I saw her laying
13 up in the aisle there.

14 Q. Ms. Tardy, Bertha Tardy?

15 A. Yes.

16 Q. When did you first notice-- did you know Carmen
17 Rigby before that day?

18 A. Carmen Rigby?

19 Q. Did you know her?

20 A. Yes, sir.

21 Q. Did you see her in the store?

22 A. Yes. I saw her the same time I saw Robert and
23 BoBo. See, I was standing right in, in the middle of all
24 three of them.

25 Q. Uh-hum. Okay, after you saw all these individuals
26 and you saw Mr. Stewart on the floor there, what did you do
27 then?

28 A. After I saw all three of them?

29 Q. All four of them. Did you leave the store?

1 A. I left the store then to see--

2 Q. --Where did you go when you left the store?

3 A. Up to the Coast to Coast.

4 Q. Okay, did you go anywhere else after you left the
5 store other than up to the Coast to Coast store?

6 A. That's all. I went up there and come right out.

7 Q. What did you do when you got to Coast to Coast?

8 A. I told the lady in there to call the police and
9 tell them to call the police department and tell them to send
10 the police over there and an ambulance quick as possible.

11 Q. Okay. Did she do that?

12 A. Yes. She did that.

13 Q. So once you left Tardy Furniture, you went
14 immediately up to Coast to Coast?

15 A. I went immediately up there.

16 Q. How far would that be from the front door of Tardy
17 Furniture to the Coast to Coast building?

18 A. It's three stores up, three doors up.

19 Q. Three doors up?

20 A. Yes.

21 Q. So it wasn't very far at all?

22 A. It's not far. It is three doors up. It's the
23 third door.

24 Q. Okay. And did you stay in Coast to Coast until
25 Chief Hargrove arrived?

26 A. No, sir. I went back down as far as the old
27 Liberty Cash building. I waited until he come down.

28 Q. Okay, did you go back in the store with the Chief
29 at that time, Chief Hargrove?

1 A. Yes, sir. I went back in with him.

2 Q. What, if anything, did you notice on the floor at
3 that particular time that you had not noticed earlier?

4 A. Anything I noticed? Well, it was blood on the
5 floor, and it was a track in that blood when I come out, when
6 we got back down there that I didn't see when we was there.

7 Q. Yes, sir. Did Chief Hargrove, did he check your
8 shoes to make sure that you didn't make those tracks?

9 BY MR. LUMUMBA: Judge, the questions are
10 still very leading.

11 BY MR. HORAN: I will rephrase. I will
12 rephrase.

13 BY MR. HORAN:

14 Q. Did you make the tracks in that blood?

15 A. Who, me?

16 Q. Uh-hum.

17 A. No, sir.

18 Q. You weren't wearing tennis shoes that day?

19 A. No, sir.

20 Q. What kind of shoes were you wearing that day?

21 A. I was wearing, oh, a pair of shoes like this.

22 (Witness indicating.)

23 Q. Same type of shoes?

24 A. Same type of shoes I got on now, but the treads on
25 them are different from what was in that blood.

26 Q. Yes, sir. Did you eventually leave that store
27 after you and Chief Hargrove went inside?

28 A. Say did--

29 Q. Did you leave the store eventually?

1 A. That evening. I stayed there all day just about
2 it.

3 Q. If you can for me, Mr. Jones, will you tell me how
4 long it took you to, from the time that you noticed the
5 bodies to leave the store and make that phone call at Coast
6 to Coast. How much time elapsed between the time that you
7 actually left the store the first time and made the phone
8 call? How long did it take you to get up there and have them
9 make that phone call? How many minutes?

10 A. Well--

11 BY MR. LUMUMBA: --Objection. If he asks him
12 how much time, let him answer the question. Don't
13 suggest an amount of time.

14 BY MR. HORAN: Okay, I will rephrase. I know
15 it didn't take an hour.

16 BY MR. HORAN:

17 Q. How long did it take you to leave the store and go
18 to Coast to Coast and have the lady up there make the phone
19 call?

20 A. It didn't take me over, over, not over two minutes,
21 two or three minutes. Not over three minutes at the longest.

22 Q. Yes, sir.

23 BY MR. HORAN: No further questions.

24 CROSS-EXAMINATION BY MR. LUMUMBA:

25 Q. I just have a few. Good afternoon, Mr. Jones.

26 A. Good afternoon.

27 Q. And we have met before, haven't we, Mr. Jones?

28 A. Sir?

29 Q. We have met before, haven't we?

1 A. Yeah.

2 Q. Okay, and you know that I am representing Mr.
3 Curtis Flowers in this case; right?

4 A. Yes.

5 Q. And Mr. Jones, would it be safe to say that
6 actually you are a friend of Mr. Flowers' family too; is that
7 correct?

8 A. Huh?

9 Q. I'm sorry; I will keep my voice up. You are a
10 friend of Mr. Flowers' family?

11 A. Yes.

12 Q. He has lived in the community a long time; is that
13 correct?

14 A. Yes.

15 Q. And you have known him a long time?

16 A. Uh-huh.

17 Q. Did you see him when you went into-- did you ever
18 see him inside of Tardy's store when you went in there that
19 day?

20 A. No, sir.

21 Q. Okay. Did you see him anywhere around there that
22 day?

23 A. No, sir.

24 Q. Did you see him when you were on your way to
25 Tardy's store that day?

26 A. No, sir. I didn't.

27 Q. Now let me ask you this, Mr. Jones. So you didn't
28 see him in any way close to and in connection to these bodies
29 which tragically where people had died. You didn't see him

1 anywhere around that, did you?

2 A. No, sir.

3 Q. I'm sorry?

4 A. No, sir. I didn't see him.

5 Q. Okay, now let me ask you this. You, if I
6 understand correctly, you arrived at Tardy's store, I think
7 that you have estimated before around about 9:30 or somewhere
8 close to that?

9 A. Somewhere close to that time. I couldn't give you
10 the exact time, but it was somewhere close to around there.

11 Q. Okay, around about 9:30?

12 A. Yeah.

13 Q. Okay, now and then you went in, and you discovered,
14 you discovered the people who had died. Is that correct, or
15 the people in the case of one, Mr. Stewart, he was still
16 alive?

17 A. Yes, sir. He was still alive.

18 Q. Okay, but then you discovered these folks; right?

19 A. Yeah.

20 Q. And you had to look down on the floor in order to
21 see them; is that correct?

22 A. Yes.

23 Q. And when you went in there, would it be safe to say
24 that you didn't see any tracks at that time?

25 A. Yeah.

26 Q. Okay, you didn't-- the first time you went in
27 there, you didn't see any tracks; is that right?

28 A. No. Uh-uh.

29 Q. Okay. You have to say yes or no.

1 A. No.

2 Q. Okay, thank you. Then you left out; is that right?

3 A. That's right.

4 Q. Now and let me just pause here one minute to ask
5 you these couple of questions. Right behind Tardy's there is
6 a place called-- well, actually there is a Coast to Coast
7 behind Tardy's; isn't that correct?

8 A. Yeah.

9 Q. And is that kind of like a garage or something?

10 A. Yeah, it's a tire shop. It's a shop. They work on
11 lawn mowers and tires back there.

12 Q. Okay, and that was open that day, was it not?

13 A. Yes, that's right.

14 Q. Because I think on the way to Tardy's, you actually
15 stopped there, and you talked to somebody for a few minutes;
16 is that right?

17 A. Yeah, that's right.

18 Q. Okay. And so you know it was open, and there were
19 people working in and out of there; is that right?

20 A. That's right.

21 Q. And that is behind Tardy's; is that correct?

22 A. It's right behind Tardy's old store now.

23 Q. Right, behind Tardy's old store; right?

24 A. Yeah.

25 Q. So anybody that runs in back of Tardy's and runs,
26 you know, is going to run past there; is that right?

27 A. Beg your pardon?

28 Q. Anybody that runs behind Tardy's down that alley
29 and behind Tardy's, they have got to run past there; is that

1 correct?

2 A. That's right.

3 Q. Okay. Now the other thing is the, and you didn't
4 see anybody running?

5 A. Uh-uh.

6 Q. Okay, now let me ask you this. Now the Coast to
7 Coast where you made the telephone call, that is actually
8 down the street from Tardy's; is that correct?

9 A. Up the street.

10 Q. Up the street, I'm sorry; excuse me. Like that
11 means, okay.

12 A. North of Tardy's.

13 Q. Okay, it's north of Tardy's. That's right, okay.
14 And then, and that is like across the alley; is that
15 correct? That is across the little street that--

16 A. --It's across the alley.

17 Q. Okay, and so what we are doing, just so the ladies
18 and gentlemen won't be confused, that street out there is
19 called Front Street which Tardy's is on?

20 A. Yeah, that's right.

21 Q. And then on Front Street what you have is you have
22 got Tardy's. I'm going to start with Tardy's. You have got
23 Tardy's right there at the corner of Front and Carrollton; is
24 that correct?

25 A. That's right.

26 Q. Okay, and then, and then at some point if you move
27 away from Tardy's, is that a vacant building there?

28 A. It's a vacant building there. It's the old Liberty
29 Cash.

1 Q. Okay, now we are going north.

2 A. Going north.

3 Q. That is a vacant building. Then if you move from
4 there, and then right next to there is an alley? Is that
5 what it is?

6 A. No, it's another building.

7 Q. Another building. Is that vacant too?

8 A. Yeah, it's vacant.

9 Q. Okay. So those are two vacant buildings, and then
10 do you get to the alley?

11 A. To the alley.

12 Q. Yeah.

13 A. And then across the alley is Coast to Coast.

14 Q. Okay. So you get to the alley, and across there is
15 Coast to Coast?

16 A. Yes, sir.

17 Q. Now that Coast to Coast, that is not the tire
18 place, is it? The place that you are talking about on the
19 same, that fronts on Front row. What is that? What are they
20 doing there?

21 A. In the one where I went?

22 Q. Where you made the call at; right.

23 A. Well, that is the main store. That is the office
24 and main store.

25 Q. Okay.

26 A. Yeah, up there and that is the shop in the rear
27 back there.

28 Q. Okay. So in the rear is where they do the tires;
29 right?

1 A. Huh?

2 Q. In the rear is where they do the tires?

3 A. Yeah.

4 Q. Okay, and that is in the back?

5 A. That's in the back; that's right.

6 Q. And that's the place where you know there was some
7 people there because you stopped there?

8 A. Yeah.

9 Q. Okay, and then the place up front on Front Street,
10 up the street from Tardy's, that is what is like an office or
11 something; is that right?

12 A. What? The next door?

13 Q. Yeah, where you made the phone call.

14 A. Oh, that is the office. That is the main store.

15 Q. Okay.

16 A. Yeah, that's the main store there.

17 Q. Okay.

18 A. And the office.

19 Q. Okay, now when you arrived there -- so let me just
20 ask you this question. Once you went up to Coast to Coast,
21 when you first went up to Coast to Coast, you didn't see
22 anybody out front there, did you?

23 A. No.

24 Q. Did you see-- do you know a gentleman by the name
25 of Porky Collins or Charles Collins? Do you know him?

26 A. Porky Collins.

27 Q. Right. Do you know him?

28 A. I imagine I would know him. I can't place him
29 offhand.

1 Q. All right.

2 A. But I have heard the name.

3 Q. Okay.

4 A. Yes.

5 Q. Okay. Did you see anybody riding past out front at
6 the time that you went out there?

7 A. No, I didn't.

8 Q. Did you see any kind of truck or car parked out
9 front?

10 A. Seemed like there was one car parked down there in
11 front of Tardy's. It was parked down near the fire plug down
12 there. One car parked out there.

13 Q. Near a fire plug?

14 A. Near that fire plug.

15 Q. Is that in front of Tardy's, south--

16 A. --It was right in front of the lower window, just
17 below the door.

18 Q. Okay, so that is not north of Tardy's. That is
19 right in front of the window?

20 A. That is right in front of it.

21 Q. Okay. And which side of the street was that on?
22 Was that on the same--

23 A. --on the same side of Tardy's.

24 Q. Okay, did you see any cars parked on the opposite
25 side of the street from where Tardy's was?

26 A. No, it wasn't nothing. The only thing over there
27 was my truck.

28 Q. Your truck was parked there?

29 A. Yeah.

1 Q. Oh, okay. And there were no, there were no-- did
2 you see any trees out there or anything like that?

3 A. Any trees?

4 Q. Were you parked near the trees?

5 A. Uh-uh.

6 Q. Okay. But in any event the only thing on the
7 opposite side of Tardy's was your truck?

8 A. Yeah.

9 Q. Okay, and didn't--

10 A. --seemed like.

11 Q. I'm sorry?

12 A. My truck was in the center aisle, in the center of
13 the street.

14 Q. Didn't anybody park near your truck as far as you
15 know?

16 A. No.

17 Q. Okay, and you didn't see anybody arguing out there
18 near your truck or anything like that?

19 A. No, I didn't.

20 Q. Now okay, now you don't know, do you, once you went
21 down to Coast to Coast, you stayed in there and made a phone
22 call or asked the lady to make a--

23 A. --I asked the lady to make it.

24 Q. Okay, and you stayed in there for a while; is that
25 correct?

26 A. Just a second or two until she made the call.

27 Q. All right.

28 A. In fact, I was on my way out when I told her to
29 make the call.

1 Q. Okay.

2 A. I was on my way back out, and when she got, after
3 she made the call, well, I turned around there because she
4 told me, she asked me what happened down there. And I told
5 her it was three people dead and one just hanging on. And
6 she said, said, "Well, I am scared to stay up here." And I
7 said, "Well, no." I said, "Now you stay here because if
8 you, don't you come down there because you will be scareder
9 down there than you is up here." So I said, "You just stay
10 right here, and I am going down there and I will be back."
11 See, we all good friends along there. I told her to just
12 stay, for her to stay in there.

13 Q. Okay. Mr. Jones, just a couple of other
14 questions. So you don't actually know if anybody actually
15 went into Tardy's, any customer or anybody else went into
16 Tardy's while you were up at Coast to Coast, do you?

17 A. No, I don't.

18 Q. Okay. Now but in any event, once you came back out
19 of Tardy's, you didn't go into Tardy's again until the Chief
20 got there; is that right?

21 A. That's right.

22 Q. So then what you did is you went into Tardy's with
23 the Chief, and that's when you saw some tracks; is that
24 right?

25 A. Say when I went in with?

26 Q. With the Chief.

27 A. Oh, yeah. That's when I saw what now?

28 Q. Tracks.

29 A. Truck?

1 Q. Tracks, I'm sorry. You have got to excuse me. Let
2 me get a little closer and talk to you. Tracks. Is that
3 when--

4 A. --Oh, that's when I saw the track, yeah, after we
5 got back in there.

6 Q. Okay.

7 A. Yeah.

8 Q. I have got to learn how to talk, Mr. Jones. Can't
9 nobody understand me. Okay, but in any event; okay, Mr.
10 Jones, the only other thing I wanted to ask you, so you
11 really don't know when those tracks were left there, do you,
12 Mr. Jones?

13 A. When they was left there?

14 Q. Right. You don't know when they got there?

15 A. No, I don't know when they got there, but I know
16 that they wasn't there when I left.

17 Q. Oh, okay.

18 A. Yeah. I know that. I don't know when they were
19 put there.

20 Q. Oh, okay.

21 A. But I do know that they wasn't there when I left.

22 Q. Okay, and you don't know whether or not somebody
23 walked in and walked right back out after you left, do you?

24 A. I don't think he would have had time. Well, he
25 wouldn't have had time to go in there and come back out
26 unless he just looked in the door before, you know, before I
27 got back because I didn't go that far all the way down in the
28 store.

29 Q. Did you go all the way to Coast to Coast?

1 A. I went all the way to Coast to Coast.

2 Q. Okay, and did you go into Coast to Coast?

3 A. Yeah.

4 Q. And Coast to Coast, let me see; you said that that
5 is down at one empty store, two empty stores, an alley and
6 then Coast to Coast; is that right?

7 A. Yeah, that's right.

8 Q. And then you went in there and asked the lady to
9 make a call?

10 A. Yeah.

11 Q. And you and the lady had a conversation about
12 whether she should stay there or leave the place?

13 A. Yeah, but that didn't take too long, you see.

14 Q. Okay. Okay. Now let me ask you this, Mr. Jones.
15 Did Doyle Simpson ever work at Hardy's-- Tardy's; I'm sorry?

16 A. Say did he ever work there?

17 Q. Yeah.

18 A. Yeah, he worked there.

19 Q. Was he working there when you retired?

20 A. I don't know whether he was working right-- he was
21 probably connected with it because he just worked extra,
22 yeah.

23 Q. Okay, and this is my -- I have just two other
24 questions for you, and that's it. Now when we, when I met
25 you, did I ask you to take a ride with me somewhere to see
26 how long it took to get from first of all, from Wal-Mart to
27 go down to - what is that place called? - Don Mitchell's or
28 something like that?

29 A. Yes.

1 Q. And then we went down from Wal-Mart to Don
2 Mitchell's. We came back from Don Mitchell's to a place on
3 Bell Street where somebody was supposed to live; is that
4 right? Do you remember that?

5 A. Yeah. On, I forgot who it was now, but I remember.

6 Q. Okay, and then did we go from there to, back to
7 Tardy's or go over to Tardy's from there?

8 A. Yes.

9 Q. Okay, and that took at least 15 minutes, didn't it?

10 A. Yes.

11 Q. Even driving kind of fast; right?

12 A. Yes.

13 Q. Okay. And that is even if you didn't stop and go
14 into any place; isn't that right?

15 A. Huh?

16 Q. It took 15 minutes even if you didn't get out of
17 your car and go in anywhere; isn't that right?

18 A. Yeah.

19 Q. We didn't go in nothing. We just rode up there and
20 rode back; right?

21 A. Yeah.

22 Q. Okay. And the other thing that I would ask you,
23 the final thing, was Mr. Tardy normally at the store every
24 morning?

25 A. Yeah, most times.

26 Q. Okay. Did you see him there that morning?

27 A. Uh-uh.

28 (Defense Counsel confer briefly.)

29 Q. I just want to-- this has been a long time ago that

1 this happened; is that right, Mr. Jones?

2 A. Yeah.

3 Q. Okay, I just, and you did testify at an earlier
4 hearing; is that correct? You testified at an earlier
5 hearing a while ago?

6 A. Yeah.

7 Q. Okay, I'm just going to show you page 307 of your
8 testimony, and I just have one question to, you know, ask
9 you. When you were asked to estimate, to tell them how long
10 it took you to get from inside the store to Coast to Coast,
11 when you were asked that question back here, and this was
12 back in, I think 1987 when you were asked this question.
13 Were you -- this has your name up here. Is that you, Sam
14 Jones?

15 A. That's right.

16 Q. Okay, do you recall that you were asked this, and
17 it's not much difference but I would just like to go into it
18 if I could. It says, "All right, sir. How long do you think
19 it took you when you left the store to get up to Coast to
20 Coast approximately?" And your answer was, "It didn't take
21 me over-- well, after I got out, headed-- well, it didn't
22 take me over five or six minutes." Question: "Five or six
23 minutes?" Answer: "Yes." Is that basically what you said
24 then?

25 A. Now it has been a lot of water went under the
26 bridge since then. And I tell you, at the time that question
27 was asked I had a lot of time to think.

28 Q. Okay.

29 A. And get everything together.

1 Q. All right.

2 A. Yeah. Now if you had of seen what I seen down
3 there, I am telling you, it was something down there that
4 morning. And most people would have said anything.

5 Q. Okay.

6 A. But I was giving as close as I could.

7 Q. Okay.

8 A. Yes, sir.

9 Q. Right, and that is okay. I am just--

10 A. Okay.

11 Q. Okay, right. Right, okay.

12 BY MR. LUMUMBA: I don't have any other
13 questions.

14 REDIRECT EXAMINATION BY MR. HORAN:

15 Q. Mr. Jones, were you in a hurry to get help there
16 that day when you left that--

17 A. --Yes, I was in a hurry to get help to him.

18 Q. You didn't go up there and ask them at Coast to
19 Coast for a cup of coffee or anything like that, did you?

20 A. No, I didn't. I just, I went up there and asked
21 her to call the police department and tell them to send the
22 police over here and an ambulance quick as possible, and I
23 turned around. Of course, now what I was talking, when I
24 stopped to tell her don't, for her not to come down there, I
25 turned around, but I was steady backing up.

26 Q. Yes, sir.

27 A. Going out the door.

28 Q. Can you, can you see the front of Tardy Furniture
29 from the front door of Coast to Coast?

1 A. Can you see it?

2 Q. Yes, sir.

3 A. You can see it. Yeah, you can see it.

4 Q. Okay, you went straight back down to Tardy?

5 A. Yeah.

6 Q. And I assume after you-- you went down there and
7 waited for Chief Hargrove? You waited for the police to
8 arrive?

9 A. Yeah, that's right. I waited in front of the old
10 Liberty Cash building.

11 BY MR. HORAN: No further questions.

12 BY THE COURT: Is he finally excused?

13 BY MR. LUMUMBA: Yes, sir.

14 BY MR. HORAN: He is as far as the State is
15 concerned.

16 BY MR. LUMUMBA: And he is released from our
17 subpoena also.

18 BY THE COURT: Mr. Jones, you are free to go.
19 They may have you a place to stay now, but you can
20 go home whenever you get ready.

21 BY THE WITNESS: All right. Thank you, Your
22 Honor.

23 WITNESS EXCUSED.

24 BY THE COURT: Ladies and gentlemen, I know
25 y'all are ready now, so we are going to take a
26 break. Let me see y'all up here just a second. I
27 have got some information for you.

28 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
29 THE JURY AS THEY WERE LEAVING THE COURTROOM AS

1 FOLLOWS:)

2 **BY THE COURT:** They are going to move the
3 witnesses to the Holiday Inn on Highway 49 North,
4 so there is over there by--

5 **BY MR. FREELON:** --That's where we are at,
6 ain't it?

7 (Laughter. Off the record.)

8 (FOLLOWING THE AFTERNOON RECESS, PROCEEDINGS
9 CONTINUED AT 4:15 P.M. WITH ALL COUNSEL, THE
10 DEFENDANT AND THE JURY PRESENT:)

11 **BY THE COURT:** Who do you have next?

12 **BY MR. EVANS:** Charles Collins.

13 **BY THE COURT:** Mr. Collins, have a seat up
14 here. Have you been sworn?

15 **BY THE WITNESS:** Yes, sir.

16 **CHARLES "PORKY" COLLINS,**

17 a white male called to testify as a witness by the State of
18 Mississippi, having first been duly sworn, testified as
19 follows, to-wit:

20 **BY THE COURT:** State your name for the record,
21 please.

22 **BY THE WITNESS:** Charles Collins.

23 **BY MR. EVANS:** May I proceed, Your Honor?

24 **DIRECT EXAMINATION BY MR. EVANS:**

25 Q. Would you state your name.

26 A. Charles Collins.

27 Q. Mr. Collins, where do you live?

28 A. 502 Bell Street, Winona.

29 Q. And how long have you lived in Winona?

1 A. All but four years all my life.

2 Q. Mr. Collins, I want to direct your attention back
3 to July the 16th of 1996, the day that the murders occurred
4 at Tardy Furniture. Do you remember that day?

5 A. I do.

6 Q. Can you tell us starting with that morning what you
7 were doing and if you had an occasion to see any of the
8 victims?

9 A. I got up that morning. I had to go to the bank,
10 and my wife had a list of stuff, one of these honey-do lists
11 you have fixed out for you, you know. And I had to bring my
12 car to a mechanic's shop and put it in there. And I went to
13 town. I had to go to the bank, and when I passed the bank, I
14 looked at the clock on the car, and it either had 9:58 or
15 9:59 on it, and the bank doesn't open until 9 o'clock. So I
16 went to the post office. I had to get a--

17 Q. --Is that 9:58 or 8:58?

18 A. I mean 8:58. It was either 8:58 or 8:59.

19 Q. Okay.

20 A. And I went to the post office, and I got a postal
21 money order, and I filled it out, and I mailed it. As I
22 started out the post office, there is a little breezeway in
23 between the front door and the inside of the post office.
24 Carmen Rigby come in one side of it, and I came in the other
25 side and we spoke.

26 Q. All right, let me stop you there a minute. From
27 where Tardy Furniture is located on Front Street, how far is
28 it to this bank that you saw Carmen Rigby at?

29 A. I didn't see her at the bank. I said I passed the

1 bank.

2 Q. Okay, you passed the bank.

3 A. I had to go in the bank that morning on some
4 business, and the bank wasn't open, so I went to the post
5 office first.

6 Q. Okay, it's the post office that you went to?

7 A. I went to the post office first.

8 Q. How far is that from Tardy Furniture? Just
9 approximately; are we talking about a block, two blocks?

10 A. About three blocks.

11 Q. Okay. What was Ms. Rigby doing when you saw her?

12 A. When I saw her, she had some, looked like mail or
13 something she may have picked up at the post office in her
14 hand. Her purse was over her shoulder, and some keys were on
15 her ring finger.

16 Q. You must have been fairly close to her.

17 A. I was as close as from here to there to her. We
18 just met right there going out the same door.

19 Q. All right, what happened next after you met her
20 there?

21 A. She spoke to me and I spoke to her.

22 Q. Okay, what did you do next?

23 A. Then we walked out the door together, and we talked
24 going down the steps at the post office. And when we got to
25 the street, there were several cars coming. We waited. We
26 was talking all this time. We walked up almost where my car
27 was, and I didn't know it was her car that was parked there
28 in front of mine, but we were parked-- I was parked right
29 behind her in front of the First Baptist Church. We stood

1 there and talked for several minutes, and we was talking
2 about our children, just casual conversation. And she turned
3 to the left to go get in her car. I turned to the right to
4 get in mine, and I got in my car, and I was parked directly
5 behind her. And while she was talking to me, she had still
6 had them keys on her finger. And she got in the car and I
7 just thought to myself, that car was awful clean. It
8 was--and mine was filthy, and she looked over and she looked
9 up in the mirror, and she done her hair like this right
10 here. She put the keys in the car-- the reason I know she
11 did, the back-up lights came on on the car, and I said well,
12 I will just pull in behind her. And I pulled out behind
13 her.

14 And I was going to pay my gas bill, but I passed
15 the street. So I said well, I have got, had to go to the
16 cleaners, so I said well, I will make my turn to your right
17 on Front Street or Main Street or ever what that is, which
18 goes by Tardy Furniture Company.

19 Q. Okay.

20 A. And I had to stop and wait on a car. It was a car
21 coming down the street, and when I got in front of Tardy
22 Furniture Company, I just sort of glanced over, and she waved
23 at me. I went down to the cleaners, and there was a bunch of
24 cars parked there.

25 Q. All right, let me stop you right there for a
26 minute. I want to show you State's Exhibit 4 and ask you to
27 look at this photograph if you would.

28 A. (Pause.) All right.

29 Q. In that photograph can you see the cleaners that

1 you were headed to at that time?

2 A. Yes, I do.

3 BY MR. EVANS: Your Honor, may the witness
4 step down in front of the jury?

5 BY THE COURT: Yes.

6 BY MR. EVANS:

7 Q. If you would, step down here. I want to get you to
8 point out -- you can hold the photograph. Just hold it in
9 front of you where the whole jury can see it and point out
10 where the cleaners is located.

11 A. It's located right here. (Witness points for Mr.
12 Lumumba.) Right there.

13 Q. All right. Thank you.

14 A. (Witness resumes witness stand.)

15 Q. And as you were driving by going toward the
16 cleaners, where was Carmen Rigby going at that time?

17 A. She was fixing to go in the door. She, like I
18 said, she had her purse over her shoulder. She had a, looked
19 like might have been mail she had gotten from the post
20 office. I don't know that's what it was, but that's what it
21 looked like to me.

22 Q. And which door was she going in?

23 A. The front door.

24 Q. Of Tardy Furniture?

25 A. Of Tardy Furniture Company.

26 Q. Approximately what time was that?

27 A. It probably took me five minutes inside the post
28 office or maybe a little longer, ten minutes at the most from
29 the time that-- well, the time we talked. It may have been a

1 little over ten minutes because by the time I filled out the
2 money order and mailed it, walked out and we talked, and by
3 the time I got there, it may have been a little over ten
4 minutes.

5 Q. Okay, sir. Ten or fifteen minutes?

6 A. Ten or fifteen minutes. Fifteen minutes at the
7 most.

8 Q. And once you saw Ms. Rigby going in the front door
9 of Tardy Furniture, where did you go then?

10 A. I went down to the cleaners. There was several, a
11 bunch of cars parked there, and I am handicapped, and at
12 times I can't walk very far. So what I had to get to the
13 cleaners wasn't something rushing. It wasn't something
14 pressing. I could have done it the day before. I could have
15 done it the day after. It wasn't nothing real pressing, so I
16 went back, turned right back up. I went back up, I guess it
17 is Summit Street, the street the post office is on, and went
18 and paid my gas bill.

19 Q. Okay. After you paid your gas bill, where did you
20 go then?

21 A. I started back down; I come back down by Barksdale
22 Garner's service station, and when I got where Summit Street
23 is, my wife called me on the car phone and told me that I had
24 got the wrong spark plugs for--

25 Q. Okay, now the service station that you are talking
26 about, is that on the end of Front Street?

27 A. It's on the opposite end of the street from where
28 the cleaners is at.

29 Q. Okay. Approximately how far in distance?

1 A. It's two blocks. It's two streets. It's two
2 blocks.

3 Q. Okay. When you found out that you had picked up
4 the wrong spark plugs, what did you do?

5 A. I went and I had some-- when I had to go to the
6 bank, I had some papers that I, two sets of papers that I was
7 supposed to have brought with me. And I had picked up, and I
8 was supposed to have picked up the money for the stuff at the
9 cleaners. My wife told me where it was all at, and I had
10 forgotten to pick up one of the envelopes from the, for the
11 bank. And I don't know if I went by the house then or if I
12 went to Don Mitchell's. But I went to Don Mitchell's and got
13 the spark plugs that I had gotten, brought them back to
14 Wal-Mart and got the right spark plugs. I went back to Don
15 Mitchell's and brought those spark plugs back down there.

16 Q. All right, do you know what time you were at
17 Wal-Mart picking up the spark plugs?

18 A. Well, I give a receipt to, I believe it was to
19 y'all that morning.

20 Q. Yes, sir.

21 A. Showing what time that I picked up those spark
22 plugs.

23 Q. Do you remember what time that was?

24 A. I'm going to say it was around, probably around
25 9:30, 9:40, something like that. I really don't know.

26 Q. Okay. Give me just a second.

27 BY MR. EVANS: May I have this marked for
28 identification, Your Honor?

29 BY THE COURT: Yes, sir.

1 (RECEIPT FROM WAL-MART WAS MARKED AS STATE'S
2 EXHIBIT S-99 FOR IDENTIFICATION.)

3 (Exhibit S-99 for identification was shown to
4 Mr. Lumumba.)

5 BY MR. EVANS:

6 Q. Mr. Collins, I show you Exhibit S-99 and ask you to
7 look at the time on the bottom of that receipt and tell us
8 exactly what time you checked out at Wal-Mart?

9 A. 9:43.30.

10 Q. Okay, and is that a copy of the receipt that you
11 furnished?

12 A. That's the copy of the receipt right there.

13 BY MR. EVANS: Your Honor, I offer this
14 exhibit into evidence.

15 BY THE COURT: Any objection?

16 BY MR. LUMUMBA: No, sir. I have no objection
17 to that receipt.

18 BY THE COURT: Let it be marked.

19 (WAL-MART RECEIPT PREVIOUSLY MARKED AS STATE'S
20 EXHIBIT S-99 FOR IDENTIFICATION WAS NOW RECEIVED IN
21 EVIDENCE.)

22 BY MR. EVANS:

23 Q. All right. After you left Wal-Mart at 9:43, where
24 did you go next?

25 A. To Don Mitchell's.

26 Q. Okay, and where is it located?

27 A. About two and a half-- two, two and a half, to
28 three miles south of Winona.

29 Q. Okay, and how long did you stay there

1 approximately?

2 A. I walked up and handed him the spark plugs, told
3 him I would see him later, and I got in my car and left.
4 Just long enough to hand him the spark plugs and get back out
5 in the highway and left.

6 Q. Once you did that, where did you go?

7 A. I went back by my house-- I believe that's when I
8 went back by my house and picked up the thing for the bank
9 and the money for the clothes at the cleaners.

10 Q. Is your house between Don Mitchell's and Tardy
11 Furniture?

12 A. It's about halfway between Don Mitchell's and Tardy
13 Furniture Company.

14 Q. All right. After you left your house at that time,
15 where did you go?

16 A. I went, was going to the cleaners first. And
17 that's when I passed the cleaners, and that's when I noticed
18 these two men standing there beside a car. One was standing
19 in front of the car, and one was standing beside the car.

20 Q. And this was when you were down close to Tardy
21 Furniture?

22 A. It was just before you get to Tardy Furniture
23 Company on the opposite side of the street.

24 Q. Okay. What brought your attention to these two men
25 that were in front of Tardy Furniture?

26 A. They were making these hand gestures. I thought
27 they were arguing. In fact, I thought they was fixing to
28 fight.

29 Q. Okay. And which direction were you traveling when

1 you saw these two people?

2 A. South.

3 Q. How close to them did you come?

4 A. Within as close as from here to that rail right
5 there.

6 Q. Okay, this rail right here?

7 A. That rail right there, or closer.

8 Q. This one?

9 A. It was a car length. I was in the street. It was
10 a car length there and they was, the car was parked right
11 there. It was within that close or closer.

12 Q. Okay.

13 BY MR. LUMUMBA: Judge, estimating for the
14 record the area he identified out here is about, I
15 would say 30 feet.

16 BY THE WITNESS:

17 A. Well, it was the distance--

18 BY THE COURT: --Wait a minute, Mr. Collins.
19 Would you agree with that, that it's about 30 feet?

20 BY MR. EVANS: Well, I would like to question
21 my own witness and let him do the cross if he would
22 like--

23 BY MR. LUMUMBA: --No. No, I'm not trying to
24 do that, Judge, but when a witness says a distance,
25 I think it is appropriate for the record to
26 indicate for the record--

27 BY THE COURT: --The Court will take judicial
28 knowledge that it looks like it's about 30 feet.

29 BY MR. EVANS: May I proceed, Your Honor?

1 **BY THE COURT:** Yes, sir.

2 **BY MR. EVANS:**

3 Q. If I can remember where I was, Mr. Collins, I will
4 try to start back over. As you saw these two people standing
5 out there, were these males or females?

6 A. Both of them were males.

7 Q. Were they black or white?

8 A. They were black.

9 Q. Did you see either one of them's face?

10 A. Yes, I did.

11 Q. And when you saw the face, what were you doing?

12 A. I was looking.

13 Q. All right, and again, to make sure I understand,
14 what caught your attention for you to be looking at the face
15 of the person that you saw?

16 A. One man was standing in front of the car with both
17 hands on the hood of the car. The other man was standing at
18 the passenger side of the car, and he, they was doing their
19 hands. The man on the front of the truck--car raised his
20 hands up. They was doing his hands like that right there,
21 and the other one made a move. And I thought, well I, you
22 know, I really got, I guess you can say I was being nosy if
23 you want to. I was going to try to-- I thought they was
24 fixing to fight.

25 Q. All right. And did you have an occasion to do
26 anything else to even get a better look at--

27 A. --Yes, I did. I made the block and come back
28 around to see what was going on. I wanted to see what was
29 going to happen.

1 Q. All right, so the jury will understand, in front of
2 Tardy Furniture, in front of this whole row of buildings
3 there is kind of an island out there that vehicles can park
4 in; is that correct?

5 A. That's right.

6 Q. And do I understand that you made that circle and
7 came back around and looked at them again?

8 A. That's right.

9 Q. Okay, when you last saw these people that you were
10 looking at, what were they doing, or where were they headed?

11 A. They were headed across the street in the direction
12 of Tardy Furniture Company. Well, they were up just a little
13 bit north of where Tardy Furniture Company was, just a little
14 bit, and they were headed toward the street, across the
15 street toward Tardy Furniture Company.

16 Q. Mr. Collins, do you see the person that you looked
17 in the face and saw in front of Tardy Furniture going toward
18 Tardy Furniture in this courtroom?

19 A. I will always believe it's that man right there.

20 BY MR. EVANS: May the record reflect that he
21 has pointed to and identified the Defendant in this
22 cause, Curtis Flowers?

23 BY THE COURT: Let the record reflect that.

24 BY MR. EVANS:

25 Q. As close as you can pin it down because we know
26 that you were at Wal-Mart at 9:43, what time do you think it
27 was that you saw this man in front of Tardy Furniture walking
28 toward the direction of the store?

29 A. Probably-- let's see; I went to Don Mitchell's,

1 probably took about five minutes. Fifteen to twenty minutes
2 at the most.

3 Q. So as close as we can estimate, we are talking
4 about somewhere around a little bit before 10:00 to a few
5 minutes after 10:00?

6 A. That's correct.

7 BY MR. EVANS: One moment, Your Honor.

8 (State's Counsel confer.)

9 BY MR. EVANS: Tender the witness.

10 BY MR. LUMUMBA: One second, please, Your
11 Honor.

12 CROSS-EXAMINATION BY MR. LUMUMBA:

13 Q. Good afternoon, Mr. Collins.

14 A. Good afternoon.

15 Q. Mr. Collins, would it be safe to say, just a brief
16 inquiry about something before we get into what your
17 testimony is. It would be safe to say that actually you have
18 a, you take medication sometimes because-- is that correct?

19 A. I take, yeah, I take medication sometime. I am
20 taking it today.

21 Q. Okay, and your medication you take, is it
22 medication that you take because you have a poor memory?

23 A. I wouldn't hardly think so. I don't think the
24 doctors think so either.

25 Q. Okay, is it true that you do have memory problems?

26 A. I wouldn't hardly think so.

27 Q. Okay. Would it be true that you have a lot of
28 problems remembering things?

29 A. I wouldn't hardly think so.

1 Q. Now it's true though that you did testify at
2 another hearing in this case some time ago; is that correct?

3 A. That's correct.

4 Q. Okay, and at that time there was a person there
5 taking down dictation or just like this person is now; is
6 that right? A court reporter?

7 A. That's correct.

8 Q. Okay, and they were, as you were talking, they were
9 typing; is that right?

10 A. That's correct.

11 Q. Now I'm going to show you a transcript of that
12 hearing, and now I notice that sometimes you have your
13 glasses on, and sometimes you have your glasses off; is that
14 right?

15 A. That's correct.

16 Q. Do you have glasses which are prescription glasses?

17 A. That's correct.

18 Q. Do they help you see?

19 A. This close they do.

20 Q. Okay, do you wear those glasses when you are out
21 driving your car?

22 A. No, I do not.

23 Q. So you didn't have the glasses on that day; is that
24 correct?

25 A. No, but I had them with me.

26 Q. But you didn't have them on when you were looking
27 at Tardy's store?

28 A. I didn't need them to see Tardy's store.

29 Q. And you don't have them on when you were looking at

1 the persons that you said were two men? You didn't have them
2 on then?

3 A. I didn't need them to see them.

4 Q. Okay, but the question is did you have them on?

5 A. No, I did not.

6 Q. Okay, let me ask you, it says, this is a person
7 called Charles Collins here--

8 BY MR. HORAN: --Your Honor, I hate to object
9 during this, but could you give us the page you are
10 on?

11 BY MR. LUMUMBA: Yeah, we are on page 438.

12 BY MR. HORAN: Thank you.

13 BY MR. LUMUMBA:

14 Q. And the name of the person here is Charles Collins;
15 is that correct?

16 A. That's correct.

17 Q. Okay, now I'm going to ask you to take a look here
18 down at line 14 and then at lines, all the way from 14 to 17,
19 and then when you get finished with reading those two lines
20 to yourself, then let me know. Then if you want to read
21 anything else there, you can also just to make sure it's in
22 context, but then after you do that, let me know.

23 BY MR. HORAN: What line are you on, Mr.
24 Lumumba?

25 BY MR. LUMUMBA: I am sorry; I will repeat
26 it. Page 438 and we are talking about line 14
27 through line 17.

28 BY MR. HORAN: Okay.

29 BY THE WITNESS:

1 A. (Pause while witness reads.)

2 Q. Okay, now what my question is at this point when
3 you are at that hearing, and this hearing is some time in
4 October of 1997?

5 A. Uh-hum.

6 Q. Were you asked this question, and did you give this
7 answer? "You have problems with your memory, don't you, Mr.
8 Collins?" Question. Answer. "I take a lot of medication,
9 sir, and I have trouble remembering a lot of things; yes,
10 sir." Was that the answer you gave at that time?

11 A. Yes, it was. Because at that time I had had a lot
12 of problems and I had had a lot of tests run, and at that
13 time I was having lot of, you know, at that time I was
14 having, you know, a little problem. Not just say, not
15 remember things that happened, but it's a lot of things that
16 if you take a lot of medication like that, you would
17 understand.

18 Q. Okay, I understand. And in fact, let me just think
19 about it for a minute. First of all, early that morning you
20 had taken some spark plugs down to Mr. Mitchell; right?

21 A. That's correct.

22 Q. And it turned out that they were the wrong spark
23 plugs?

24 A. Yeah, and you want me to tell you why?

25 Q. If you--

26 BY MR. EVANS: --Your Honor, we would like for
27 him to be allowed to finish his answer.

28 BY MR. LUMUMBA: --No, wait a minute. He asked
29 me a question.

1 BY MR. LUMUMBA:

2 Q. If you would like to, Mr. Collins, it's not up to
3 me whether you can explain your answer. You can explain your
4 answer any time if you want after you answer the question.

5 A. All right, I went to-- you know, they got a
6 computer at Wal-Mart. And you get help and they key this
7 thing in, and they tell, you tell them what kind of car you
8 got, and they tell you what kind of parts you need?

9 Q. Uh-hum.

10 A. The fellow keyed it in. He told me what kind of
11 part I needed, so I took it down there. And the memory there
12 was at the computer at Wal-Mart. I mean it wasn't mine.

13 Q. I see. So in any event, that's why you had the
14 wrong spark plugs?

15 A. That's why I had the wrong spark plugs.

16 Q. Now you left the house-- after you took those spark
17 plugs, then at some point you left the house again going
18 downtown to make a few runs; is that correct?

19 A. After I took, I took my car down there about 8
20 o'clock that morning and left it because the man didn't open
21 until 8:30, and I had business I had to take care of. That's
22 the reason the spark plugs was left down there. That's the
23 reason I didn't know they were the right ones--wrong ones.
24 If had of been there, he could have told me. I could have
25 went and swapped them right then, but he wasn't there. He
26 wasn't open.

27 Q. Okay. And when you went downtown the first time,
28 it would be safe to say you forgot to stop at the bank; is
29 that right?

1 A. No, I did not forget to stop at the bank. I just
2 told you; the bank wasn't open.

3 Q. Okay, but you forgot to stop at the bank before you
4 came back home; is that correct?

5 A. No, I did not.

6 Q. So it's not true that you went down there the first
7 time and forgot to stop at the bank; is that right?

8 A. That's correct. I did not forget to stop at the
9 bank. It wasn't open the first time, and then I got a
10 telephone call saying I had the wrong spark plugs, so I went
11 and changed spark plugs.

12 Q. Would it be safe to say you had forgotten some
13 papers that morning for the bank?

14 A. I had several different things. We were in the
15 process of buying some real estate. I had several different
16 things that I had to get, and I forgot--

17 Q. --Excuse me--

18 A. --one set of them, yes.

19 Q. Excuse me, and I don't have any problem with your
20 explaining the answer. Can you answer the question yes or
21 no, whatever, then explain so we will make sure we get an
22 answer. So the question is, is what you are telling me is
23 that you did forget some papers for the bank; right?

24 A. I forgot part of them, yes.

25 Q. Okay. And it would say that at another-- okay, it
26 would also be safe to say that the first time you went
27 downtown, you forgot the money to get the clothes out of the
28 cleaners; isn't that correct?

29 A. That's correct.

1 Q. So you forgot to get the money to get the clothes
2 out of the cleaners. You forgot some papers you say for the
3 bank. Are those two things correct?

4 A. That's correct.

5 Q. And as of this time, you are indicating that it's
6 not true that you forgot to go to the bank; is that right?

7 A. Do what now?

8 Q. You say that you didn't forget to go to the bank;
9 is that right?

10 A. No, I didn't forget to go to the bank.

11 Q. Okay, well, at one point when you were actually--
12 you were supposed to be paying a gas bill too; is that right?

13 A. I did pay a gas bill. I wasn't supposed to; I did
14 pay it.

15 Q. Okay. But you were going to pay that gas bill when
16 you-- remember you said you went down there and went to the
17 post office?

18 A. Yeah, I remember what I said.

19 Q. And you had, you are in there with Ms. Rigby; is
20 that correct?

21 A. Uh-huh.

22 Q. And then when she left, you were leaving too; is
23 that correct?

24 A. That's correct.

25 Q. And it was your intentions to stop at the place to
26 pay the gas bill and turn in there and pay the gas bill at
27 that time; is that right?

28 A. That's correct.

29 Q. And you drove right past the place and forgot to

1 stop there; correct?

2 A. That is nothing unusual. The way that street is
3 right there you could easily miss it.

4 Q. Okay, but--

5 A. --and it was some cars coming and I would have had
6 to stop and waited for them to pass, so I decided to go
7 straight on down to the cleaners.

8 Q. Okay, but-- and I understand that, Mr. Collins, but
9 I am just trying to establish a few things here. Did you
10 forget to turn in there and pay your gas bill?

11 A. No, I did not.

12 Q. I thought you just said that you did forget it;
13 that is easy to do. Did you forget it?

14 A. I said it would be easy to forget the way that road
15 is there, but it was some cars coming and I had to wait for
16 them to pass, and I said well, I might as well go on to the
17 cleaners.

18 Q. All right, so. (Pause) Now let me understand
19 that. You did pass the street where you were supposed to pay
20 the gas bill; right?

21 A. Sure did.

22 Q. Okay. And why did you pass the street? I'm
23 sorry.

24 A. I just told you. There was some cars coming. I
25 would have had to have stopped and waited for those cars to
26 pass to turn in. So I said why stop there; I can go on to
27 the cleaners. I wasn't in any hurry that day.

28 Q. Okay, so let me, well, let me see. Okay, but this
29 is a day and, that you at some point had forgot the money to

1 get the clothes out of the cleaners; is that correct?

2 A. That's right.

3 Q. As the transcript says, okay. And this was a day
4 where at one point you passed the, for whatever reason, you
5 did pass, and we will get back to that again when we find it
6 in the transcript. But at whatever point, you did pass the
7 gas company or the place you were going to take the gas
8 bill?

9 A. I just told you I did.

10 Q. Okay, and you forgot some papers you were supposed
11 to be using at the bank; is that correct?

12 A. I told you I did.

13 Q. Okay. And in fact, you went downtown two different
14 times, and you never did get the clothes out of the cleaners;
15 isn't that correct?

16 A. No, I did not.

17 Q. Okay, now let me ask you this. And at least
18 according to what it said at your transcript at the time that
19 you testified, you do take medication, and you do have memory
20 problems; is that correct? That's what it says here. Is
21 that right?

22 A. I think my memory is very well.

23 Q. Okay, but it says here that you have problems
24 remembering things?

25 A. I just told you at that time that statement right
26 there was making, I was having lots of problems.

27 Q. Okay, well--

28 A. --It wasn't during the time all this happened, but
29 at that time right there that that statement was made, I was

1 having lots of problems. You can check with the doctor.

2 Q. Okay, but here you didn't tell them, Well, I was
3 just having problems right now?

4 A. They didn't ask me.

5 Q. Okay, you didn't tell them I'm just having problems
6 right now, but I wasn't having problems back then. You
7 didn't say that?

8 A. They didn't ask me. I am answering the questions
9 just like you are asking me.

10 Q. Okay, but at that time it was on 7/16/96 when you
11 forgot to bring the papers for the bank; right? That's when
12 you forgot to do that?

13 A. That is nothing unusual for me. I get up every
14 morning. I don't have--

15 Q. --Well, excuse me. Excuse me, sir. Is that the
16 date that that happened on?

17 A. You are correct.

18 Q. Okay, and that's the date that it says here that
19 you forgot to bring the money for the cleaners; right?

20 A. That's correct.

21 Q. Now the other thing, let's trace your steps a
22 little bit here. You, from what I hear you saying is that
23 you had an opportunity to go downtown, and actually you went
24 downtown the first time, and that's when you saw Ms. Rigby;
25 is that correct?

26 A. Saw her at the post office.

27 Q. Okay, and after you saw Ms. Rigby, you circled
28 around past the place where you were supposed to pay the gas
29 bill; is that correct?

1 A. No, I did not.

2 Q. Well, you didn't pay the gas bill?

3 A. I didn't circle around it though.

4 Q. But you didn't pay it?

5 A. I didn't pay it.

6 Q. Okay, and then you didn't go to the cleaners
7 either?

8 A. I didn't, and I told you why.

9 Q. Okay. And that was because, you didn't go to the
10 cleaners because it was too many cars out there?

11 A. That's exactly right.

12 Q. Okay, but then you came back down again to downtown
13 the second time, and you still didn't go to the cleaners?

14 A. That's when I saw the activity. That's when I
15 drove back up the street there to see what was going on.

16 Q. Okay. And now when you went downtown the second
17 time, that was after you went to Wal-Mart; is that right?

18 A. That's correct.

19 Q. And after you went to Wal-Mart, you-- well, we know
20 that it was about 9:43 according to your receipt when you got
21 that receipt in Wal-Mart; is that correct?

22 A. That's correct.

23 Q. Now when you get the receipt, you are at the
24 counter; is that correct?

25 A. That's correct.

26 Q. You are not outside in your car. You get the
27 receipt at the counter; right?

28 A. Why, sure.

29 Q. Okay, and then once you get the receipt, what you

1 did is you had to walk out and get to your car; is that
2 correct?

3 A. That's correct.

4 Q. And I think you said that you have some kind of
5 disability; is that correct?

6 A. Well, they have got a handicapped parking place
7 right there outside the door, and that's where I was parked.

8 Q. And that's where you were parked, but you still
9 have a disability; right?

10 A. That's right.

11 Q. So you had to walk out there and get in the spot
12 where the handicapped parking space was; right?

13 A. Why, sure.

14 Q. Okay, you had to go out the door; right?

15 A. That's right.

16 Q. And then you had to drive down to Don Mitchell's;
17 is that correct?

18 A. That's correct.

19 Q. And Don Mitchell's was like, you say about two
20 miles in the opposite direction from where Tardy's is. Is
21 that correct?

22 A. It's pretty close - two, two and a half, three
23 miles. It is pretty close. I don't know exactly how far it
24 is.

25 Q. And then when you go to Don Mitchell's, it's like,
26 Don Mitchell's is a place that you come up to it, and then
27 there is a fence or a gate there; is that right?

28 A. That's right.

29 Q. And you have to turn up and go into there, drive in

1 there before you can get to the office. It's a few feet in
2 there; isn't that correct?

3 A. It's 30 or 40 feet, 50 feet, something like that, I
4 imagine. I don't know.

5 Q. Then once you drive in there, you get out and you
6 go in and give the man the spark plugs?

7 A. No, I did not.

8 Q. Okay, you gave it to them from the car?

9 A. He was standing right there. I opened my door,
10 stood out and handed them to him, got back in my car, and
11 drove off.

12 Q. Okay, so you got out of the car, and then you got
13 back in your car?

14 A. That's right.

15 Q. So then you had to get your car together and drive
16 out of there. You weren't in a hurry; right?

17 A. No, I wasn't in any hurry. I didn't have nothing
18 pressing; I mean, you know.

19 Q. So you wasn't driving particularly fast?

20 A. No, I don't drive fast anyway.

21 Q. And we know you started this journey at 9:43;
22 right?

23 A. Well, that's what the receipt says.

24 Q. Okay, then you came all the way back down, and what
25 you did is you-- after you came from Don Mitchell's, you went
26 by your house; isn't that right?

27 A. That's exactly right.

28 Q. Okay, and you were actually prepared to go in your
29 house, and then your wife said, "Where is the clothes?"

1 Right?

2 A. No. When I came back out of the house is when she
3 asked me that.

4 Q. Oh, okay. You were in the house, and then when you
5 came back out of the house, your wife said, "Where is the
6 clothes?"

7 A. Yeah, she was working in her business. She has got
8 a business there.

9 Q. Okay, she has got a business right next to the
10 house?

11 A. Right there, yes.

12 Q. So then you had to get back into your car and then
13 go down to Tardy's; right?

14 A. I didn't go to Tardy's then. That's when I was
15 going to the cleaners.

16 Q. Okay, you were going to the cleaners, okay. And
17 what you did is, so after going to, coming out of Wal-Mart at
18 9:43, getting in your car - and I'm just trying to make sure
19 I got it right - in the handicapped spot, driving down to Don
20 Mitchell's, getting out of your car, handing the spark plugs
21 to Don Mitchell, got back in your car, going to your house.
22 Now you started this journey at 9:43; right?

23 A. Uh-hum.

24 Q. Then what you did is you are there at your house,
25 go in your house, come out of your house. Your wife sees
26 you. "Where is the cleaning"; right?

27 A. That's right. That's right, basically right.

28 Q. And then you get back in your car and you go to
29 Tardy's; is that correct?

1 A. No, I went to the cleaners.

2 Q. You went to the cleaners; I'm sorry. I'm sorry.
3 You went to the cleaners. Now that is-- but in order to go
4 to the cleaners, actually you could have went to the cleaners
5 without passing Tardy's; isn't that correct?

6 A. Oh, I could have went to the cleaners going by a
7 whole lot of other places, but that's the particular route I
8 took.

9 Q. Okay, but just, and I understand that and that is
10 fine. You can let the jury know that too, but it is true
11 that you could have went to the cleaners without going by
12 Tardy's; isn't that correct?

13 A. Yeah, but I went the fastest way.

14 Q. Well, let me ask you this. You actually went and
15 turned down Summit Street; isn't that correct?

16 A. That's exactly correct.

17 Q. And Summit Street, in order to get on Summit
18 Street, get to Summit Street you took your, you drove all the
19 way down Church Street, did you?

20 A. I drove straight up 51 Highway from my house to
21 Summit Street, took a right on Summit Street down to Main
22 Street, and that was the closest way.

23 Q. Okay, well, let me see if I can follow you on
24 that. I'm going to show you-- I'm going to first of all have
25 marked a little exhibit that the State shared with me and ask
26 you to look at it.

27 BY MR. EVANS: Is that our copy? Is that the
28 one we furnished?

29 BY MR. LUMUMBA: Yeah.

1 BY MR. EVANS: Is that the map we furnished
2 you?

3 BY MR. LUMUMBA: A copy of it.

4 (MAP OF STREETS OF WINONA WAS MARKED AS
5 DEFENDANT'S EXHIBIT D-7 FOR IDENTIFICATION.)

6 BY MR. LUMUMBA:

7 Q. Now Mr. Collins, let me ask you this. You are
8 saying you didn't drive on Church Street; is that right?

9 A. I did when I left Tardy's that time, I went down
10 Church Street that time.

11 Q. No, let me, let's get it straight now. I'm talking
12 about the time that you were coming back the second time to
13 go to the cleaners. You were going to the cleaners; is that
14 right? You were going to the cleaners. Once your wife told
15 you, "Where is the cleaning?" and you were supposed to be
16 going to the cleaners, that is what was going on; right?

17 A. That's right.

18 Q. And you told us that you just went all the way down
19 51 which is Applegate. 51 is Applegate; isn't that true?

20 A. I think that's right.

21 Q. Okay, you went all the way down Applegate, and you
22 turned down Applegate, from Applegate on to Summit Street; is
23 that right?

24 A. That's right.

25 Q. And then you went down Summit until you got to
26 Front Street. Is that what you did?

27 A. That's exactly right.

28 Q. And you turned on Front Street, and that's the only
29 way that you were driving past Tardy's going to the cleaners;

1 isn't that correct?

2 A. That's correct.

3 Q. Okay, and you have indicated to me that was the
4 fastest way; right?

5 A. To me it is, yes.

6 Q. Okay, you didn't say anything about Church Street;
7 is that right?

8 A. Not at that time I didn't.

9 Q. Okay, well, now let me ask you this. I want to
10 introduce you to page 58. You just testified at a hearing
11 not too very long ago; is that right?

12 A. That's right.

13 Q. And at this particular hearing please read for me
14 here from, on page 58, questions 1 on down past line, well,
15 actually I'm really wanting you to start at line 1 and go
16 down past line 16 where you see these lines that we have
17 drawn there. When you get finished reading that to yourself,
18 let me know.

19 A. (Pause while witness reads.)

20 Q. Okay, now were you asked these questions, and that
21 hearing didn't take place too long ago; right?

22 A. I know when it took place.

23 Q. Okay, and were you asked these questions on page
24 58, and you gave these answers, didn't you? "And you went to
25 Don Mitchell's once-- well, actually twice before you went to
26 Wal-Mart's and once after you went to Wal-Mart." Answer:
27 "That's correct." That was the question that was answered;
28 is that correct?

29 A. That's correct.

1 Q. "Right, okay." Question. "And you had gone by
2 your house to get the money that you had forgotten?" Answer:
3 "That's correct." "You went back downtown, and at the time
4 and you got back downtown, what street did you turn on?"
5 Answer: "Went down Summit Street and turned south on Main
6 Street." Question: "Is Summit Street the street that the
7 bank is on?" Answer: "That's right." "Did you go to the
8 bank at that time?" Answer: "No, I did not because when I
9 came to town, I came up Church Street and turned down Summit
10 Street." Is that what you said?

11 A. That's what it says there, but that is the third
12 time I went up there when I come down Church Street.

13 Q. But you are supposed to be going to the cleaners at
14 this time; right?

15 A. The third time I went I come down Church Street.
16 That's when-- the third time I went to the cleaners.

17 Q. Oh, you were going to the cleaners a third time?

18 A. Yeah, that's when I found out something had
19 happened at Tardy's, and I decided I would go on up there to
20 the cleaners to see what was going on. That's when I come
21 down Church, down Church Street.

22 Q. In any event, you just told us that you went all
23 the way down Applegate or 51, but there it says Church
24 Street; is that right?

25 A. That's what it says there, but the third time is
26 when I went down Church Street.

27 Q. I see. Okay, but now also you told me that you
28 never forgot to go to the bank, that you only forgot to take
29 some papers to the bank; isn't that right?

1 A. That's right.

2 Q. Can you look at this statement. Now this is, I'm
3 showing you what is-- I guess I need to mark this for
4 identification purposes.

5 BY MR. EVANS: Which one are we talking
6 about?

7 BY MR. LUMUMBA: Okay, this is a statement
8 given on March the 10th, 1997, taken by District
9 Attorney's Office.

10 BY MR. EVANS: All right. We offer the whole
11 exhibit into evidence, Your Honor.

12 (State's and Defense Counsel confer briefly.)

13 (STATEMENT OF PORKY COLLINS WAS MARKED AS
14 DEFENDANT'S EXHIBIT D-8 FOR IDENTIFICATION.)

15 BY MR. LUMUMBA:

16 Q. Okay. I'm showing you what is marked as
17 Defendant's Exhibit D-8 for identification purposes, and I
18 would like for you to -- do you see the person's name at the
19 top of that?

20 A. Uh-hum.

21 Q. And that is Porky Collins; is that correct?

22 A. That's right.

23 Q. Okay, and it says the statement is taken on March--
24 "Today's date is March 10, 1997." That's what it says;
25 right?

26 A. That's right.

27 Q. And it has a place where it says "Johnson" and then
28 it has "Collins"; is that right?

29 A. Uh-hum.

1 Q. You know Mr. Johnson is the investigator; right?

2 A. You are talking about John Johnson?

3 Q. Yeah.

4 A. Yeah, I know him.

5 Q. And you are Mr. Collins; is that right?

6 A. That's right.

7 Q. Okay, why don't you go down here and you can look
8 at line, at the line that I am pointing to, and for the
9 record this is a line about 1, 2, 3, 4, 5, 6, 7 lines from
10 the bottom, Judge. And it is right here, and it says here--
11 could you read that line to yourself, please.

12 A. (Pause) Oh, yeah. You want me to explain that to
13 you?

14 Q. Well, let me read it first. Let's see what it
15 says. It says here, "I was going to stop at the bank, but I
16 did not. I forgot it." Is that what it says?

17 A. That's what it says.

18 Q. Now as long as we are in this statement, let's get
19 one other thing straight. Now you told the ladies and
20 gentlemen of the jury that you actually got a call from your
21 wife?

22 A. That's the reason I--

23 Q. --that told you that you had to go by, that said
24 you had to go by Don Mitchell's; is that correct?

25 A. No, that is not correct. That's the reason I
26 turned down Church Street. I got a call from my wife as I
27 turned up toward the bank right there, and Church Street was
28 the nearest way to go to Wal-Mart. I turned down Church
29 Street, and I went down Church Street to Wal-Mart.

1 Q. That is after your wife called you?

2 A. That's exactly right.

3 Q. Okay, well, just read on a little bit more there to
4 yourself, Mr. Collins, and you see, and read on a little bit
5 further down there and read to the next two lines, and then I
6 have a question to ask you.

7 A. (Pause while witness reads.)

8 Q. When you are finished, please let me know.

9 A. All right.

10 Q. Here it doesn't say that you got a phone call from
11 your wife. What it says, "When I got in, my wife told me
12 that Don Mitchell had called and said I had the wrong spark
13 plugs to go in the car." Isn't that what it says?

14 A. That's what it says.

15 Q. And so what they are saying there is that when you
16 got in and they were talking about getting into your house;
17 isn't that right?

18 A. That's right, but my wife had already called me.
19 When I come back by the house, she mentioned about me having
20 the wrong spark plugs.

21 Q. Before you told us that your wife called you to
22 tell you you had the wrong spark plugs. Now--

23 A. --That's what I just told you.

24 Q. Now you are telling us that what happened is that
25 you got into your house, and then your wife told you?

26 A. No, my wife called me, and she didn't know that I
27 had went and picked up the spark plugs and brought them down
28 to Don Mitchell's. And when I went back by the house to pick
29 that stuff up, she told me, said Don Mitchell called and

1 said, talking about the spark plugs. That's what, that is
2 what this is all about right here.

3 Q. All right, well, so what happened despite the fact
4 that at one point you said you got a call from your wife;
5 what happened is you got in-- you went all the way back to
6 the house, and then she told you you had to get the spark
7 plugs?

8 A. I got a call from my wife on my car phone telling
9 me that I had the wrong spark plugs. I went to the Wal-Mart
10 and swapped the spark plugs and brought them to Don
11 Mitchell's. When I come back, my wife stuck her head out of
12 the shop door as I was getting those papers, and she said,
13 "Don Mitchell called about those spark plugs. Did you do
14 anything about it?" I told her yeah, I had already taken
15 care of that, and I was on my way to the bank then.

16 Q. Okay, well, see read what it says. Okay, let's
17 read what it says here, okay?

18 A. Okay.

19 Q. It says, "I went on back to the house." And that's
20 after you had been downtown the first time and didn't pay,
21 didn't pay, didn't get the stuff out of the cleaners and
22 didn't go by the bank; isn't that right?

23 A. That's correct.

24 Q. Okay, then it says, "I was going to stop at the
25 bank, but I did not. I forgot it." That's what it says;
26 right?

27 A. When I got the telephone call, I forgot about it.
28 I turned down Church Street and went to Wal-Mart.

29 Q. It doesn't say anything about a telephone there,

1 does it?

2 BY MR. EVANS: Your Honor, he is trying to
3 explain his answer.

4 BY THE WITNESS:

5 A. I am trying to explain it to you, but that's--

6 Q. --Okay, why don't we keep reading. Let's see if
7 that's when you went to Wal-Mart. "I turned down Church
8 Street when I paid my gas bill." Excuse me; excuse me. "I
9 turned down Church Street, when I paid my gas bill, I turned
10 down Church there and went on to the house. When I got in,
11 my wife told me that Don Mitchell had called and said I had
12 the wrong spark plugs to go in the car." Isn't that what it
13 says?

14 A. That's what it says.

15 Q. "So I run down there and got those spark plugs and
16 to Wal-Mart and picked up a few spark plugs and run them down
17 there." That's what it says there; right?

18 A. I wasn't reading. (Pause while witness reads.)
19 That's what it says here.

20 Q. So what it is saying here in this statement is that
21 you got in; your wife told you you forgot the spark plugs,
22 and then you ran down to Wal-Mart. You got the spark plugs,
23 and then you ran them down to Don Mitchell; right?

24 A. I had already done that when--

25 Q. --Well, that is not what it says here, is it?

26 A. Well, that's what I had already done.

27 Q. And this is your statement. Actually this is your
28 taped statement, right? What you said yourself?

29 A. That's what it says here.

1 Q. Okay. Then it says, "I stopped by my house. My
2 wife asked me, 'Did you get the dry cleaners?' And I said,
3 'No, I did not.' I said, 'I will go right now.'" And
4 that's when you were on your journey to downtown; is that
5 correct? Back again downtown. You were going back--

6 A. --Yes, sir, the second time, yeah. After I went
7 and got the spark plugs, that's where I went, back downtown.

8 Q. Okay, now we are going to get to this map in a
9 minute. Let's just cover one other thing and get it out of
10 the way. Okay, look, now let me ask you this. You are
11 telling the ladies and gentlemen of this jury that first of
12 all, you went downtown and you first of all, for whatever
13 reason, went on Summit Street; is that correct?

14 A. That's the street you have got to go on to where I
15 was going.

16 Q. Okay. But well, actually you can go down
17 Applegate-- excuse me. You can go from your house. You can
18 reach the cleaners without ever touching Summit Street; isn't
19 that true?

20 A. No, I cannot.

21 Q. Can't you--

22 A. --Oh, Summit Street, yeah.

23 Q. Yeah. You don't have to go down Summit Street;
24 right? Because your house is, let me see. Your house is
25 from where Front Street is, you live on a street called Bell
26 Street; is that correct?

27 A. That's correct.

28 Q. Bell Street runs into Applegate; isn't that
29 correct?

1 A. That's correct.

2 Q. Or let's say 51 because that's what everybody calls
3 it, 51; right? Is that correct?

4 A. That's correct.

5 Q. 51 runs north and south; isn't that correct?

6 A. That's correct.

7 Q. And from where the cleaners is to your house, is
8 that north or south? Is your house north or south of the
9 cleaners?

10 A. My house is south of the cleaners.

11 Q. Your house is south of the cleaners; that's
12 correct; right? And what you have to do in order to get to
13 the cleaners the way you went, you had to go down Applegate,
14 turn on Summit which is actually, which is actually north of
15 Tardy's and north of the cleaners; isn't that correct? You
16 have to-- strike that. You first of all had to come from
17 Bell up Applegate going, you were, in fact, traveling-- your
18 house is north of the cleaners?

19 A. It's south of the cleaners.

20 Q. South. Okay, you were traveling north. You had to
21 go north; is that correct? Is that right?

22 A. Uh-hum.

23 Q. And then what you had to do is go all the way from
24 the southerly direction that you were coming from north all
25 the way to what you call Summit Street. Is that correct?

26 A. That's correct.

27 Q. And Summit Street is north of the cleaners; isn't
28 that correct?

29 A. It's north of cleaners.

1 Q. So what you had to do is go from your house which
2 is south to a street which was north, turn on that street
3 that was north, and then go back south in order to get to the
4 cleaners. Isn't that correct?

5 A. If I went that way, it is.

6 Q. And that's the way you say you went; right?

7 A. That's the way I went.

8 Q. And if you didn't go that way, then you wouldn't
9 have seen two men. Isn't that correct?

10 A. That's correct.

11 Q. Because actually if you would have went down Church
12 Street, you could have gone down Church Street; isn't that
13 correct?

14 A. I could have, yes.

15 Q. Okay, and what you could have done at a certain
16 point is actually turned on a street which is called
17 Carrollton off of Church Street. Isn't that correct?

18 A. I don't even know where Carrollton Street is in
19 Winona.

20 Q. Carrollton is the street that runs right alongside
21 the cleaners. You went to the cleaners--

22 A. --Well, I could have turned down through there,
23 yeah.

24 Q. And you never would have had to even reach Summit
25 Street. You would have never had to go that far north; isn't
26 that correct?

27 A. I would have had to have connected to Summit
28 Street-- I mean to the Main--oh, no. That is Summit Street.
29 No, that is Main Street. Yeah, that's right. You are right.

1 Q. That's right. Well, let me see if I am right. Let
2 me see if I am right here. I am showing you a map which is
3 now marked as Defendant's Exhibit for identification
4 purposes. On this map this is Applegate which is 51; isn't
5 that correct?

6 A. That's correct.

7 Q. Your house is somewhere off to the left of the map;
8 isn't that correct?

9 A. My house is right here on this map.

10 Q. Okay. Which is off to the left; right?

11 A. That's right.

12 Q. And what you had to do in order to go down
13 Applegate, what you had to do is go down Applegate here;
14 right? All the way to what we see here is Summit Street;
15 isn't that correct?

16 A. That's correct.

17 Q. And what you're doing is you are going all the way
18 north here, and you are turning down Summit; right?

19 A. Uh-hum.

20 Q. And then you have got to go all the way down Summit
21 here until you get to Front Street; right?

22 A. That's right.

23 Q. Then you have got to turn right again going back
24 south; right?

25 A. That's right.

26 Q. And then you get to the cleaners?

27 A. Right.

28 Q. Once you pass Tardy's; right?

29 A. That's right.

1 Q. But if you don't go that way, what you can do is
2 you can go down this street here. What is this street here?
3 It has got a street called 407; is that correct?

4 A. Yeah, that is a highway.

5 Q. Okay. And you also have Church Street here; isn't
6 that correct?

7 A. That's right.

8 Q. You can hit Church Street from your house, can't
9 you?

10 A. Oh, I could have hit any of these streets down
11 through here and went up through there.

12 Q. And Church Street goes down here, and it hits
13 Carrollton; isn't that correct? It hits Carrollton south of
14 the cleaners; right?

15 A. That's right.

16 Q. And then what you can do is turn on Carrollton, and
17 you would just be right there at the cleaners; right?

18 A. I could have, yeah.

19 Q. In fact, the third time you went downtown that's
20 how you went; right?

21 A. The third time I went downtown I went up Church
22 Street, that's right, because that was after all this had
23 happened. And I turned down Carrollton Avenue and didn't get
24 to go to the cleaners then because they had the streets
25 blocked off.

26 Q. I understand. But the third time you went
27 precisely the way that I said that you could have went the
28 time that you claim you passed Tardy's; right?

29 A. I could have.

1 Q. And you would never have passed Tardy's; right?

2 A. Right. But I wasn't in any hurry.

3 Q. And on 51, they have lights?

4 A. Yeah, and on Church Street they have cars parked on
5 both sides of the road, the four way stop and all this
6 stuff. You have to wait for people to cross the highway. It
7 takes you a whole lot longer too.

8 Q. Okay but anyway, now your testimony is that for
9 whatever reason, you went all the way to Summit, went down
10 turned on Summit because you weren't going, you didn't stop
11 anywhere on Summit, did you? The second time you went down?

12 A. Yes, I did.

13 Q. The second time you went down to the, you went
14 down--

15 A. --yeah, because they have got a stop sign there,
16 and I stopped at that stop sign.

17 Q. What I mean is did you stop and get out of your
18 car?

19 A. No, I did not.

20 Q. So you turned on that street which was, now we know
21 is Front Street. That's the street that runs in front of
22 Tardy's; is that correct?

23 A. It's Front Street or Main Street, ever what it is,
24 ever what that street is.

25 Q. When you turned on the street that runs in front of
26 Tardy's, you are telling us that you were driving past; is
27 that correct?

28 A. That's correct.

29 Q. And you saw two men is what you told me?

1 A. That's correct.

2 Q. And you saw these two men. They were two black
3 men; is that correct?

4 A. That's correct.

5 Q. And they were at an old brown car; is that correct?

6 A. They were-- I have trouble with browns and greens,
7 but it was a brown, beige, tan or ever what it is, it was
8 real dirty, real filthy.

9 Q. And that's what you have indicated before; is that
10 correct?

11 A. That's correct.

12 Q. Now this is after you have, this is at the end of
13 your journey coming from Wal-Mart which you had to go all the
14 way down to Don Mitchell all the way back to your house and
15 all that kind of stuff; right?

16 A. That's correct.

17 Q. And then you are coming down that street, and you
18 see two men and you say they were walking across the street.
19 Is that correct?

20 A. No, I did not.

21 Q. Okay, where were they walking?

22 A. They were standing in front of-- one was standing
23 in front of the car, and one was standing beside the car.

24 Q. And I think you told these ladies and gentlemen of
25 the jury that they were fixing to fight. You thought they
26 were fixing to fight?

27 A. I did not. I told these, they acted, I said they
28 act like they was fixing to fight. They act like they were
29 arguing.

1 Q. So they--

2 A. --That's what brought my attention. If they hadn't
3 have done that, I probably never would have seen them.

4 Q. Well, actually what you said initially back when
5 you wrote your statement and you testified in other hearings
6 is that one of the men made a gesture with his hands. Isn't
7 that what you said?

8 A. Made a gesture with both hands.

9 Q. Well, but nobody hit anybody; right?

10 A. That's what I said.

11 Q. Okay, there were no blows passed; is that right?

12 A. If there was, it was passed while I made that
13 circle where I couldn't see.

14 Q. There was nothing fantastic happened; isn't that
15 correct?

16 A. (No response.)

17 Q. There was nothing fantastic that happened; is that
18 correct?

19 A. No, because I had to go around and make the block
20 to come back up before I could see them again.

21 Q. But you only saw the face of one man; right?

22 A. That's correct.

23 Q. And you only got a glimpse, a very brief glimpse of
24 that face; right?

25 A. I looked at him just like I am looking at you, and
26 that was it.

27 Q. You got a brief glimpse; is that right?

28 A. That's right.

29 Q. Because you said in your statement that you only

1 got a brief glimpse; is that right?

2 A. That's what I just told you.

3 Q. And were you driving at the time; right?

4 A. That's correct.

5 Q. And you only got-- and that is the only time that
6 you ever saw that man's face; isn't that right?

7 A. That's correct.

8 Q. And you didn't see that man's face. The prosecutor
9 said you went down and circled and came back. You did,
10 according to you, you did go down and circle and come back?

11 A. That's correct.

12 Q. But you didn't see that man's face when you came
13 back, did you?

14 A. No, I did not.

15 Q. So the only time in life because you had never seen
16 that man's face prior to that time; isn't that correct?

17 A. Well, I don't know. I live in Winona there. I
18 could have. If I told you I hadn't, I may be lying to you.
19 If I told you I had, I may be lying to you.

20 Q. As far as you know--

21 A. As far as I know. You know, I just seen him just
22 that, just like I told you.

23 Q. As far as you know, you just got a brief glimpse?

24 A. I did not know him. Let's put it this way.

25 Q. As far as you know, you didn't know the man's face;
26 is that right?

27 A. I did not know the man. No, I did not.

28 Q. So what you did, as far as you know, that was the
29 first time in life, as far as you know, the first time in

1 life you have seen the person; right?

2 A. Yes, that was.

3 Q. Was a brief glimpse; right?

4 A. That's right.

5 Q. And now we sit here, I mean how many years later?

6 What is this? This is '96; is that right? And you are
7 identifying a person that you saw back in '96 with a brief
8 glimpse that you had never seen before in your life; is that
9 correct?

10 A. I picked out a picture out of a lineup just a short
11 time after that.

12 Q. Well, actually you picked out a picture out of a
13 lineup about a month after that; isn't that correct?

14 A. Well, I don't know exactly when it was, but it was
15 shortly after that.

16 Q. A month after that; right?

17 A. I don't know. I couldn't tell you that.

18 Q. Okay, could it have been a month?

19 A. It could have been a month; it could have been a
20 week. I don't know.

21 Q. Okay, but well, let's see what your statement says
22 because I think your statement actually tells us when you saw
23 that.

24 BY MR. EVANS: Which statement are we
25 referring to?

26 BY MR. LUMUMBA: The statement taken on March
27 10th, 1997, which is now marked as D-4 for
28 identification purposes.

29 (NOTE: The exhibit referred to is actually

1 D-8 for identification.)

2 BY MR. LUMUMBA:

3 Q. It says, "Porky, I think on August 24, 1996, Wayne
4 Miller with the Highway Patrol and myself showed you a
5 picture line-up, showed you" actually two line-ups. Is that
6 what it says?

7 A. That's right.

8 Q. So that is a month after the incident; right?

9 A. Just like I told you, I didn't tell you that. I
10 didn't know.

11 Q. So you were identifying a person in a picture
12 lineup a month after this had occurred?

13 A. I described the man.

14 Q. No, well--

15 BY MR. EVANS: Your Honor, may the witness
16 finish his answer?

17 BY THE COURT: He has got to answer the
18 question first, and he is not, he is being -- he is
19 not answering the question. He can explain it all
20 he wants to--

21 BY MR. EVANS: --Thank you, Your Honor--

22 BY THE COURT: --but he has got to answer the
23 question first.

24 BY MR. LUMUMBA: Thank you, Your Honor.

25 BY THE COURT: You understand that, Mr.
26 Collins?

27 BY THE WITNESS: Yes, sir.

28 BY THE COURT: Okay.

29 BY MR. LUMUMBA:

1 Q. Okay, you did not make any kind of identification,
2 were never even asked to make an identification until a whole
3 month after this incident; isn't that correct, according to
4 this paper?

5 A. I guess. If that's what it says.

6 Q. And you were trying to tell me that you described
7 the man on the day of the incident. That is what you were
8 going to tell me?

9 A. That's correct.

10 Q. And your description of the man on the day of the
11 incident, actually you didn't describe **the** man. You
12 described two men; is that correct?

13 A. No, I did not.

14 Q. The only description you gave, and you gave it to
15 the officers, is that it was two black males with medium
16 complexions. That's all you said; right?

17 A. I told, what I told them about the complexion was I
18 said the one I seen's face had a complexion of Chief Johnny
19 Hargrove. I said his complexion was like Chief Johnny
20 Hargrove. Now if that is medium complexion, I don't know.

21 Q. What date is that?

22 A. 7/16.

23 Q. And what is that name up there?

24 A. Porky Collins.

25 Q. What does it say here?

26 BY MR. EVANS: Your Honor--

27 BY THE WITNESS:

28 A. --two black males. That is not my writing--

29 BY MR. EVANS: --I object. He is going by

1 what somebody else's notes are. This witness has
2 clearly testified what he told the officers on that
3 day.

4 BY THE WITNESS: What they, you know, what
5 they wrote down, you know.

6 BY MR. LUMUMBA: I withdraw that question.

7 BY THE COURT: Okay.

8 BY MR. LUMUMBA:

9 Q. Were the officers taking notes?

10 A. They were all sitting at the table there.

11 Q. Well, Mr. Collins, please. Just answer my question
12 and then you can talk about anything. Were the officers
13 taking notes?

14 A. I assume they were.

15 Q. Okay. And you don't know why an officer would just
16 put down two black males with medium complexion if you gave
17 them a complete description, do you? Do you know why?

18 A. No.

19 Q. Now in any event, when you were trying to
20 identify-- you were trying to identify a man a month later
21 who you had only seen with a brief glance on one day while
22 you were riding past; is that correct?

23 A. That's correct.

24 Q. You didn't have any reason to believe that anybody
25 had been hurt in any kind of way; right?

26 A. When?

27 Q. On the 16th when you saw these two black men?

28 A. No, I did not.

29 Q. And in fact, you had no reason to believe-- what

1 you said is they made a gesture, and they were arguing and
2 you thought they might fight; right?

3 A. That's correct.

4 Q. You only saw the man from the back of the head when
5 you came back; right?

6 A. As I came back, yes.

7 Q. And you didn't see the man doing anything except
8 walking away from the car when you came back; isn't that
9 right?

10 A. They was going across the street.

11 Q. Didn't have any guns in their hands, either one of
12 them?

13 A. I didn't see them. I couldn't see their hands
14 because of the way the car was.

15 Q. Well, you saw their hands when they made the
16 gesture; right?

17 A. I seen one of them's hands when he made the gesture
18 and seen the other one as he was up against the car.

19 Q. The one's hands that you saw that made the gesture
20 was the one who you saw his face with a brief glance; isn't
21 that correct? The one who made the gesture is the same one
22 that you took the brief glance at his face; isn't that
23 right?

24 A. The one on the hood was the one that was making the
25 gesture with his hands.

26 Q. And that's the one who you saw his face?

27 A. That's the one I saw his back.

28 Q. Okay, you never saw that person's face; right?

29 A. No, I did not.

1 Q. Well, you didn't see any kind of weapons or
2 anything on either one of them that would have drew your
3 attention; is that correct?

4 A. No, I did not.

5 Q. Now actually the two people you saw, according to
6 you, you actually saw them headed in the direction of Coast
7 to Coast; is that right?

8 A. No, it was not. They was headed sort of at an
9 angle toward Tardy Furniture. It was up around almost at the
10 Keystone Alley, I believe is what they call it there, but
11 they were headed across the street there.

12 Q. Mr. Collins, is it not true that you have testified
13 on many occasions that actually the men, first of all, were
14 not actually parked. The car was not actually parked
15 directly in front of Tardy's, was it?

16 A. No, it was not.

17 Q. It was actually parked north of Tardy's?

18 A. It was a little bit more, yeah. It was up about
19 where that alley, a little bit, right about where that alley
20 is there, yeah.

21 Q. And your previous testimony, was it not, that when
22 the men turned and walked away from you, they were walking
23 north. They were turning and going north; isn't that
24 correct?

25 A. They were turning going across the street.

26 Q. North across the street?

27 A. No. If you go across the street there, I think you
28 are going to be going west.

29 Q. Northwest; right?

1 A. I think if you are going straight across that
2 street, you are going to be going west.

3 Q. Okay, well, let's go back to the transcript. Well,
4 before we get to the actual direction.

5 (Pause while Defense Counsel confer.)

6 Q. I am showing you again what is now marked for
7 Defendant's Exhibit number 4 [sic] for identification
8 purposes. I ask you to please read toward the top of the
9 page and read the-- you can read anything else you would
10 like, but I am pointing to the line where it says, it starts
11 talking about the men and the fact that you saw them for a
12 split second. And then go down to the place where it talks
13 about which direction they turned in, which direction the man
14 turned in. Could you go over that by yourself, and then when
15 you get finished, please let me know. Top of the page on
16 page two of the statement.

17 A. All right.

18 Q. Ready?

19 A. Uh-hum.

20 Q. Okay. You indicated here, didn't you, "I happened
21 to see these two black men. One of them was standing in
22 front of the middle of the hood" and "he had both hands on
23 the hood. The other was standing at the door of the car with
24 one hand on top of the car and one hand on the door of the
25 car. He made a gesture with his hand. If it had not been
26 for that, I probably would not have noticed it." Is that
27 correct?

28 A. That's correct.

29 Q. Putting it in context, we know where we are at.

1 A. That's right.

2 Q. "I just for a split second, I got a glimpse."

3 Split second is what it says here; right?

4 A. Uh-hum.

5 Q. "I got a look at him. I went on down. Instead of
6 stopping at the cleaners, I turned and went back up the
7 street. I guess I was being nosy...to see what was going
8 on. They were acting like they were sort of arguing a little
9 bit. I got back up almost even with the car. I could see
10 them but I could not tell that much about them because there
11 were cars parked there and the trees were right there by the
12 car." That's what you said; right?

13 A. That's correct.

14 Q. So when you came back around and you couldn't tell
15 anything about them anyway; isn't that right?

16 A. All I could see was the back part of them, yes.

17 Q. And the one in the front of the car made a turn to
18 the north?

19 A. That's correct.

20 Q. The north would be toward Coast to Coast; right?

21 A. North would be up that street-- he had to turn
22 north and then he turned west going across the street.

23 Q. And he was already a bit north of Tardy; right?

24 A. Just a little bit, yes.

25 Q. So if he went north and he was already north of
26 Tardy's, he couldn't have been going toward Tardy's, could
27 he?

28 A. Well, the two cars that was parked right side by
29 side right there would--

1 Q. --Excuse me. Answer my question. If I am north of
2 something and I go further north, I can't be going toward the
3 thing that I was north of already; isn't that right?

4 A. Well, there was no other parking places down there.

5 BY THE COURT: Mr. Collins, you have got to
6 answer the questions. You are not being responsive
7 to what he is asking you.

8 BY MR. LUMUMBA:

9 Q. If I am north of Tardy's, Mr. Collins, and then I
10 walk further north of Mr. Tardy, of Tardy's, I can't be
11 walking toward Tardy's, can I?

12 A. Yeah, he turned north there just--

13 Q. Mr. Collins, answer my question. Here it says he
14 was-- you already told us he was north of Tardy's; right?

15 A. That's correct.

16 Q. And here it says he then walked north of Tardy's
17 again; right? It says he walked north of where he was.
18 That's what it says. He turned and walked north. Isn't that
19 what it says?

20 A. He headed north, yeah.

21 Q. "I never seen his face, and all I seen was more or
22 less from the back of him, every time I seen him." Is that
23 right?

24 A. That's right.

25 BY MR. LUMUMBA: Judge, may we approach for a
26 minute, please?

27 BY THE COURT: Sure.

28 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
29 THE JURY AS FOLLOWS:)

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 BY MR. LUMUMBA: I don't know; I am going to
2 have to go through the whole thing on
3 identification, and I'm going to ask to break.

4 BY THE COURT: Are you willing to finish with
5 him in the morning?

6 BY MR. LUMUMBA: Yeah.

7 BY THE COURT: Okay, good. I'm going to do
8 that.

9 BY MR. FREELON: Y'all realize you are not to
10 speak to Porky now?

11 BY THE COURT: Oh, I'm going to advise them.
12 I know that.

13 BY MR. HORAN: We can't do that?

14 BY THE COURT: (Court laughs.) I will make
15 that announcement. We will do that. Okay, before
16 we break from here, I have got something I want to
17 tell y'all.

18 BY MR. LUMUMBA: Okay.

19 END BENCH CONFERENCE.

20 BY THE COURT: Ladies and gentlemen, I have
21 been advised that the examination of this witness
22 will take considerably longer. So we are going to
23 break in the middle of it at this time, and we are
24 going to break for the night. Now let me tell you
25 the good news for y'all is it will be Outback
26 tonight.

27 I'm going to give you these instructions that
28 I have given you before, and I will give them to
29 you every day at this time at least. You are not

1 to discuss this matter amongst yourselves at all.
2 You have not heard all the testimony in this case.
3 You must not form any opinions based on what you
4 have heard, and you can't do that until such time
5 as I submit this case to you at the end. You are
6 not to discuss it with anybody else or allow
7 anybody else to discuss it with you, nobody in your
8 presence, and you are not to pay any attention to
9 any media, not to read any newspapers.

10 Any further instructions from either party?

11 BY MR. HORAN: Nothing from the State.

12 BY THE COURT: Mr. Lumumba, you got any more
13 instructions other than that?

14 BY MR. LUMUMBA: No, sir.

15 BY THE COURT: Okay. Ladies and gentlemen,
16 I'm going to turn you over to the Bailiffs, and I
17 will see you in the morning, and we will start at
18 9:00 in the morning.

19 JURY LEAVES THE COURTROOM.

20 BY THE COURT: Mr. Collins, you will need to
21 be back on the stand by 9:00 in the morning. You
22 are not to discuss your testimony with anybody at
23 all. Do you understand that?

24 BY THE WITNESS: Yes, sir.

25 BY THE COURT: You are not to allow anybody to
26 discuss it with you or in your presence. Do you
27 understand that?

28 BY THE WITNESS: Yes, sir.

29 BY THE COURT: Okay. I will see you in the

1 morning at 9 o'clock.

2 (CONFERENCE AT THE BENCH WITH THE JURY OUT AS
3 FOLLOWS:)

4 **BY THE COURT:** Look, come up here. You
5 haven't gotten me any more law, have you?

6 BY MR. FREELON: No, not with this lead time.

7 **BY THE COURT:** Okay, here is what I want
8 done. I either want law to the contrary of Ivy or
9 you have got to produce them at 8 o'clock in the
10 morning. Okay?

11 BY MR. FREELON: Okay. 8 o'clock in the
12 morning?

13 BY MR. HORAN: He has produced the
14 transcript--

15 BY MR. FREELON: --Whoa, whoa, whoa, whoa.

16 BY MR. HORAN: I have got the transcript.
17 Wait a minute now, Judge. He has got the
18 transcript here in writing, so I think if they have
19 got it, they can give that to me now.

20 BY MR. EVANS: We have got it now. It has
21 been furnished. We sure ain't giving it back.

22 **BY THE COURT:** Okay, you aren't telling me
23 nothing. I will see y'all in the morning.

24 COURT WAS RECESSED FOR THE DAY ON MARCH 24,
25 1999, AT APPROXIMATELY 5:30 P.M.

26
27
28
29

1 (TRIAL WAS RESUMED ON THURSDAY, MARCH 25,
2 1999, IN OPEN COURT WITH THE COURT, ALL COUNSEL, AND THE
3 DEFENDANT PRESENT AS FOLLOWS:)

4 BY THE COURT: Bring the jury in, and Mr.
5 Collins needs to come back to the stand.

6 (JURY ENTERS THE COURTROOM.)

7 BY MR. LUMUMBA: May I proceed?

8 BY THE COURT: Yes, sir.

9 BY MR. LUMUMBA: (To the jury) Good morning.

10 BY THE JURY: Good morning.

11 (CONTINUATION OF TESTIMONY OF CHARLES "PORKY"
12 COLLINS.)

13 CONTINUED CROSS-EXAMINATION BY MR. LUMUMBA:

14 Q. Good morning, Mr. Collins.

15 A. Good morning.

16 Q. Just to put this quickly in context, Mr. Collins,
17 and then to, of course, move on, you took two trips, I keep
18 saying downtown, but it is really like uptown or in town; is
19 that right?

20 A. That's right.

21 Q. Okay, and this is, and on these first two trips in
22 town you had four purposes as I understand it from your
23 testimony to this point. You were supposed to be, from what
24 you have told this jury, you were supposed to be going to the
25 bank, and you were going to be going to the post office. You
26 had to pay a gas bill, and you had to go to Hunger's Dry
27 Cleaners; is that right?

28 A. That's correct.

29 Q. And with two of the trips to town and between these

1 two trips to town, for whatever reason, you never got your
2 clothes from the cleaners; is that correct?

3 A. That's correct.

4 Q. And the first time you went down, as I understand
5 it, you didn't go to the cleaners because it was too many
6 cars there; is that right?

7 A. That's correct.

8 Q. However, you did leave town and still didn't have
9 the clothes; is that correct?

10 A. That's correct.

11 Q. And the second time at some point you had to go
12 back. You had to go back for money; is that right, because
13 you didn't have money for the cleaning?

14 A. That's correct.

15 Q. And you were going to the bank, and you forgot to
16 go there; is that correct, or at least that's what it said in
17 your statement that we read; is that right?

18 A. Well, I didn't forget to go by. I had, I left some
19 papers at home.

20 Q. But in your statement that we read, it said that
21 you forgot to go there; is that right? The one we saw
22 yesterday?

23 A. I (Pause.)

24 Q. We don't want to spend too much time on it because
25 we have been through it, but let me just show it to you
26 here. (Exhibit D-8 for identification shown to witness.)

27 "I was going to stop at the bank, but I did not. I forgot
28 it." Is that right?

29 A. Well, that's what it has on here.

1 Q. Okay. Now and then actually you went downtown
2 twice and never went to the bank; is that correct?

3 A. That's correct.

4 Q. And in fact, the second time or at least the second
5 time you had forgotten some papers; is that correct?

6 BY MR. EVANS: Your Honor, I tried yesterday
7 not to object. We have gone over this same thing
8 at least 300 times and I object. I believe it is
9 pretty well covered.

10 BY THE COURT: We have covered this matter
11 pretty thoroughly. Let's move on to something
12 else.

13 BY MR. LUMUMBA: Okay, we will move on.

14 BY MR. LUMUMBA:

15 Q. Okay, now would it be safe to say that, just to--
16 yesterday we didn't have a map, and I just want to see the
17 route you took. Now let's, I'm going to share with you--

18 BY MR. LUMUMBA: I'm going to ask that this be
19 marked. Actually I'm going to ask this be marked
20 here. I will show it to the District Attorney
21 first.

22 BY MR. EVANS: Your Honor, we have already
23 used a map once yesterday to show his route.
24 Again, I object because we are going over the same
25 thing over and over.

26 BY MR. LUMUMBA: Judge, I'm going to ask the
27 witness to draw the route he took so we can
28 preserve that for the jury.

29 BY THE COURT: Okay. I'm going to allow you

1 to do that, but then I want us to move on to other
2 parts of the testimony. Let it be marked. Have
3 you got any objection to be it being marked as
4 evidence?

5 BY MR. EVANS: No, sir. He marked one
6 yesterday that we agreed to.

7 BY MR. LUMUMBA: The one I marked yesterday
8 has other markings on it, Judge.

9 BY THE COURT: Okay.

10 BY MR. LUMUMBA: And I don't want-- I want--

11 BY THE COURT: --I'm going to admit it.

12 BY MR. LUMUMBA: Thank you.

13 BY THE COURT: And then you can hand it to
14 him.

15 (Mr. Lumumba confers with State's Counsel out
16 of the hearing of the Court Reporter.)

17 (ANOTHER MAP OF WINONA SHOWING LARGER AREA WAS
18 MARKED AND RECEIVED IN EVIDENCE AS DEFENDANT'S
19 EXHIBIT D-9.)

20 BY MR. LUMUMBA:

21 Q. I'm showing you, I'm showing you D-9. Okay, do you
22 see on there, on D-9 do you see 51 which is right here on the
23 map; is that correct?

24 A. That's correct.

25 Q. And you know you live on Bell Street; is that
26 correct?

27 A. Right there. That's correct.

28 Q. Bell Street. Do you see where the "C" is?

29 A. That's right.

1 Q. And your name is Collins, your last name?

2 A. That's right.

3 Q. Now Mr. Collins, if I understand it correctly, the
4 route that you took the second time you went downtown to
5 reach, to pass in front of Tardy's is a route which started
6 where you live, went up here on Applegate, 51, proceeded down
7 to Summit Street, and then-- in other words, came from the
8 south, went north, passed the spot where-- well, you went up
9 north to Summit, turned right on Summit, and then had to come
10 all the way down to the street here which is called Main or
11 Front. Is that correct?

12 A. It's one or the other. I can't remember which
13 street it is called. It's, I think it's Front Street.

14 Q. Front Street, okay. So when you said Main Street,
15 what you would have been talking about is Front Street?

16 A. Is this Front Street.

17 Q. And then what you did you turned right on that, and
18 you passed by Tardy's according to what you told us, and you
19 were headed towards the cleaners; right?

20 A. That's correct.

21 Q. And the cleaners was right here on the corner of
22 the street called Carrollton and Front Street; is that
23 correct?

24 A. It's that last street. I think that is the name of
25 that street. I'm not real sure.

26 Q. Okay, but in any event so this would be pretty much
27 the route you took where it is marked here. Is that correct?

28 A. That's correct.

29 Q. Okay. And you would have had to go from north to

1 south to pass Tardy's; right?

2 A. That's correct.

3 Q. Now there is another route which is certainly a lot
4 shorter, and this is where you live on Bell--

5 BY MR. EVANS: --Your Honor, again I'm going
6 to have to object. There is no sense in just
7 repeatedly going over the same things.

8 BY THE COURT: I'm going to let him mark that
9 shorter route on this map. He did not do that
10 yesterday. When it is marked though, I want to
11 move on.

12 BY MR. LUMUMBA:

13 Q. And it would be safe to say -- so what we are going
14 to do is we are going to write up here, "Route taken by Mr.
15 Collins." And we are going to draw an arrow to that; okay?
16 Is that all right?

17 A. (No audible response.)

18 Q. Route 51 is the route you took; is that correct?

19 A. I started here and went up.

20 Q. Okay, we will draw the arrow here too; okay?

21 A. Okay.

22 Q. And then you wound up down here someplace; right?
23 So we have the route, draw the arrow here too; okay?

24 A. All right.

25 Q. Okay. Now the shorter route, here is Bell Street;
26 correct?

27 A. That's right.

28 Q. You could have driven up to 51, turned right and
29 gone right here to this street which is called Simpson

1 Street, Simpson Drive; is that correct?

2 A. That's correct.

3 Q. And you could turn right on Simpson Drive and
4 really go right to Church Street; isn't that right?

5 A. That's correct.

6 Q. And then from Church Street all you have got to do
7 is drive straight on into town; isn't that correct? And hit
8 Carrollton right here before you even get north. You hit
9 Carrollton right here on the south side of Tardy's; is that
10 correct?

11 A. That's correct.

12 Q. And then you could turn right and go right here to
13 the cleaners which is right there south of Tardy's. Is that
14 correct?

15 A. That's correct, but my main objective was going to
16 the bank first.

17 Q. Oh, okay. You were going to go to the bank first.
18 Is that what it was?

19 A. That's right.

20 Q. But in any event, this is a short route, okay. You
21 agree with that; right? (Mr. Lumumba is writing on Exhibit
22 D-9.)

23 A. I don't know. I couldn't tell you.

24 Q. Okay, could we call it other route? Do you want to
25 say other route?

26 A. I couldn't tell you whether it was shorter or not.

27 Q. We will just put "Other route"?

28 A. It could be. I don't know.

29 Q. And this is Exhibit number 9. We are going to move

1 on here. And we will pass this to the jury at a different
2 point in time so we don't delay things.

3 Okay, now let me ask you this. And so when you
4 were taking this route, now you said you were going to the
5 bank, but actually you never got to the bank; is that
6 correct?

7 A. That's correct.

8 Q. So now the thing that, because you went this route,
9 you were going past Tardy's and you saw two men, I think is--

10 A. That's correct.

11 Q. And the, you saw a car and you have previously
12 testified that the car was brown. Is that previously what
13 you said, that the car was brown? Isn't that correct?

14 A. Brown, beige, or tan. I told you I have color,
15 difficulties with brown.

16 Q. You have problems, kind of color blind? Is that--

17 A. With browns and greens.

18 Q. And the car was dirty and dusty?

19 A. It was real dirty and dusty; yes, sir.

20 Q. And these two men, we had a little discussion
21 yesterday about what direction they were in. But you have
22 had an opportunity to-- well, first of all, let's go. You
23 have previously stated in your first statement that the man
24 at the door is the one that made the hand gesture. Didn't
25 you tell us that in that statement? The statement to the
26 police, didn't you tell them that the man at the door was the
27 one that made the hand gesture?

28 A. He made a hand gesture back to the one on the front
29 of the car. The one on the front of the car was the one that

1 was making the hand gestures when I first noticed it.

2 Q. Oh, okay. So I understand that both of them were
3 making hand gestures; right?

4 A. Right. The one that was at the door made a gesture
5 back at him, and that's when I went on down the street. I
6 just barely got a glimpse of that.

7 Q. You just barely got a glimpse of that, and that was
8 when you saw somebody's face; is that correct?

9 A. That's correct. No, I had seen the face before the
10 man at the door made the hand gesture.

11 Q. Okay, well, let me ask you, but you weren't paying
12 any attention. What made you notice was that somebody was
13 making a hand gesture; right?

14 A. That's correct.

15 Q. Okay, so other than the fact that they made the
16 gesture, you wouldn't even have paid any attention to it;
17 right?

18 A. I probably never would have seen them; yes, sir.

19 Q. So it was just like anybody else you are passing
20 downtown.

21 A. That's correct.

22 Q. No particular reason to look at them?

23 A. That's correct.

24 Q. And in fact, you said that these cars, the car was
25 all the way on the other side of the street near the railroad
26 tracks. When I say near the railroad tracks, one part of the
27 street you can park which is closest to the railroad tracks;
28 is that correct?

29 A. This car was parked in the middle of the street

1 on-- you park on both sides of the street.

2 Q. Okay.

3 A. And it was parked on the other side of the-- where
4 you park next to the furniture store there, it was parked on
5 the other side of the street, facing the cars that parks on,
6 they were together.

7 Q. Okay, they were, were they facing-- was the car
8 facing the side with the railroad tracks?

9 A. No, sir.

10 Q. Okay. Because the railroad tracks is the side of
11 the street which is the furthest away from Tardy's; isn't
12 that correct?

13 A. That's correct.

14 Q. And they were on the other side facing the side--
15 when I say other side, we are talking about the other side
16 from Tardy's. They were on the other side facing the side
17 with the railroad track. Is that a true statement?

18 A. Would you ask that again.

19 Q. Maybe, this is perhaps a point of confusion here.
20 There is this thing in the middle of the street; right?

21 A. That's correct.

22 Q. What we might called an island or something like
23 that?

24 A. Yeah, and it has got some trees planted on it.

25 Q. Let's call it an island for lack of a better word,
26 okay. So they were on the opposite side of the island than
27 Tardy's; would that be a true statement?

28 A. That's true.

29 Q. So in other words, between where that car was and

1 where Tardy's was, there is an island, and then that was
2 where the car was; is that correct?

3 A. That's correct.

4 Q. Parked up against the island where the trees is?

5 A. Well, it wasn't right in front of a tree, but it
6 was right beside a tree there, you know.

7 Q. I understand. And we have already established that
8 this was-- okay, well, we are going to establish in a
9 minute. And so in any event, you were on the side of the
10 street closest to Tardy's; is that correct?

11 A. That's correct.

12 Q. Okay. And but for this gesture, you would not have
13 looked. Now as far as the, this glimpse that you took-- now
14 let me just see. So when you took the glimpse, you saw two
15 men making-- now this was a split second glimpse. Is that
16 correct?

17 A. That's true.

18 Q. That's the way you described it. A split second
19 glimpse; is that right?

20 A. Yeah, just like me looking at you and turning away.

21 Q. Turning away. And in that split second glimpse you
22 saw a car; right?

23 A. I saw several cars.

24 Q. But you saw that car?

25 A. That car, yeah.

26 Q. You saw two men?

27 A. Correct.

28 Q. You saw hand gestures?

29 A. Correct.

1 Q. And you saw-- so during all this time that you were
2 looking, you actually weren't just focused on one thing. You
3 saw a car, two men standing in two different spots; is that
4 correct?

5 A. I really wasn't paying any attention to the car. I
6 just seen the car. What I was paying attention to was the
7 two men making the gestures. That's, you know, that's what
8 got my attention.

9 Q. You paid enough attention to the car to describe it
10 as a brown or beige car, a Pontiac or a Chevrolet. Didn't
11 you describe it that way?

12 A. I told them when I got behind the car--

13 Q. --Excuse me. Excuse me. Just answer my question;
14 then you can explain.

15 A. No, I did not at that time.

16 Q. Okay, you never said it was a Pontiac or a
17 Chevrolet?

18 A. Not at that time.

19 Q. Okay. Did you tell them that it was a brown car,
20 that it was dirty and dusty?

21 A. Not at that time, no.

22 Q. Did you later on tell them it was dirty and dusty?

23 A. I did.

24 Q. Did you later on tell them it was a Pontiac or a
25 Chevrolet?

26 A. I told them that it was a brown car with the
27 taillights going all the way across the back. It looked like
28 a Buick, Pontiac or something, you know, looked like that.

29 Q. Buick, Pontiac, Chevrolet or something; right?

1 General Motors car; right?

2 A. Right. With the taillights all the way across the
3 back.

4 Q. Okay, and so you saw the car, whenever you
5 described it, doesn't make any difference. You saw it
6 sufficiently to say what group of cars you felt it in because
7 Buicks, Pontiacs, and Chevys, they all tend to look a little
8 bit alike, don't they?

9 A. That's correct.

10 Q. Okay. And you had it enough to give it a color
11 although you feel that you can't really say for sure because
12 you are kind of color blind on browns; right?

13 A. Browns and greens.

14 Q. On browns and greens?

15 A. Uh-hum.

16 Q. Okay. But then you also gave that, and you talked
17 about a taillight going all the way across; right?

18 A. That's correct.

19 Q. So for whatever the focus, you are only talking
20 about a split second glance anyway; right?

21 A. That's correct.

22 Q. So during this split second glance, you are trying
23 to look at-- you saw a man's face for actually what wounds
24 up-- you saw the face. You were looking at the car too;
25 right, at the same time? Same time?

26 A. No.

27 Q. Okay. Well, the whole view that you saw, what you
28 have just told us, it occurred in a split second glance;
29 isn't that correct?

1 A. That's true.

2 Q. Okay, so during that split second glimpse, you saw
3 a car was one of the things. I'm not asking you how long you
4 looked at it, but you saw it and you saw it enough to
5 describe it the way you described it. Isn't that correct?

6 A. Well, I got behind it. That's when I described the
7 car.

8 Q. Okay, you saw two men; right?

9 A. That's correct.

10 Q. You saw two men making gestures with their hands?

11 A. That's correct.

12 Q. Wasn't making gestures with their face; they made
13 gestures with their hands.

14 A. That's correct.

15 Q. So you had to watch their hands in order to see the
16 gestures; right?

17 A. That's correct.

18 Q. And then during that same split second glimpse is
19 the split second glimpse that you saw all these other things
20 that part of your attention for part of the split second
21 glimpse you saw a man's face; is that right?

22 A. That's correct.

23 Q. Now based on that split second glimpse, some month
24 later and actually I think we established by looking at your
25 statement that it was about August the 24th of 1996. Is that
26 correct? That's what the statement said.

27 A. I can't remember the date.

28 Q. But whatever, but we did see the date in the
29 statement yesterday?

1 A. That is correct.

2 Q. Whatever that said was correct?

3 A. Yeah.

4 Q. Assuming it was August the 24th, 1996, that is
5 actually more than a month after July the 16th; is that
6 correct?

7 A. That's correct.

8 Q. And just to also make this very clear, nothing
9 happened eventful with these men. In other words, you didn't
10 see a fight; right?

11 A. No, I did not.

12 Q. Okay, and then you circled back around, but I think
13 you have already told me in a previous hearing that when the
14 men walked away, they did absolutely nothing that would draw
15 anybody's attention. Is that correct?

16 A. That's correct.

17 Q. And we had a little trouble with this the other
18 day, but when the men walked away - and I was looking for
19 this yesterday and I couldn't find it, and let me share it
20 with you right now. Is after you gave your taped statement,
21 actually Mr. Johnson began to ask you questions; right? He
22 asked you questions?

23 A. Several of them asked me questions. I don't really
24 remember whether it was him or not.

25 Q. 1, 2, 3, 4, 5, 6. Now I'm going to read what this
26 says, and you stop me if I read it wrong. In fact, this is
27 an exhibit, I believe, or it's not an exhibit, but it is
28 marked for identification purposes. So I guess the
29 appropriate thing is to let you look at this one which is

1 Exhibit for identification D-8 for the record, Judge.

2 A. Is this on that day?

3 Q. Yeah.

4 A. That particular day?

5 Q. Yeah. Looking right here, okay. It says,
6 "Johnson: You said that when you last saw these people they
7 turned toward the store. Did you see them walk to the
8 store?" "Collins: The only thing I done was I seen them
9 turn. They turned. The one in front of the car turned to
10 the north headed across the street and the other one closed
11 the door and headed that way. I went on up and made my
12 turn. Where they went from there, I have no idea. I really
13 didn't pay that much attention to it." So in there what you
14 said is they went to the north. Is that correct?

15 A. That's correct.

16 Q. Okay. Now this is also something we weren't able
17 to locate quickly yesterday. But in your testimony at this
18 previous hearing on page 436.

19 BY MR. EVANS: Which date are we talking
20 about?

21 BY MR. LUMUMBA: 436 at the hearing which
22 occurred in '97.

23 Q. And this is on Charles Collins at the top here;
24 right? That's what it says here; right?

25 A. Uh-hum.

26 Q. Okay, "And which direction was he traveling the
27 last time you saw him?" "I made the block around by Hunger's
28 Dry Cleaners, and I come back up. And when I come back up,
29 they had started" - **they** - "had started across the street

1 sort of like in front of Coast to Coast there, which is up
2 from the Tardy's Furniture Company. That's the last time I
3 saw them." That's what you said; right?

4 A. That's right.

5 Q. And we already know that Coast to Coast is north of
6 Tardy's; right?

7 A. Just a little bit north, yes.

8 Q. And this says they started up the street and, in
9 fact, the other thing we just read they started north;
10 right? It just said they did north; is that correct? The
11 first statement we just read?

12 A. I guess you can say, yeah, that is north.

13 Q. Yeah, well, north-- they were across the street
14 north of Tardy's, and they started north; right?

15 A. That's correct.

16 Q. Okay. And just to make sure that we have no
17 confusion about the fact they were actually walking away from
18 Tardy's, you have actually said that before, haven't you,
19 that they were actually walking away from Tardy's? You said
20 that; right?

21 A. They weren't walking directly toward Tardy's, no.

22 Q. Well, they were walking away from Tardy's as a
23 matter of fact, weren't they?

24 A. Well, they had to go between two cars.

25 Q. We are turning to a hearing which occurred just in
26 January of 1999. This is your name up here, Charles, and in
27 parenthesis they have Porky Collins; is that correct?

28 A. Right.

29 Q. Answer: "They were headed across the street."

1 Question: "Right, and walking actually toward the side of
2 the street where Tardy's was; right?" Answer: "That's
3 correct." "But actually walking away from Tardy's; right?"
4 Answer: "That's correct." "And also walking away from the
5 car; is that correct?" Answer: "That's correct." Is that
6 what you said?

7 A. That's correct.

8 Q. So when you were called upon in August over a month
9 later to identify somebody, you were being asked to identify
10 somebody and you-- strike that. You had made it very clear
11 to the police officers that you had only got a split second
12 or part of a split second glimpse at one person's face; is
13 that correct?

14 A. I said I got a glimpse.

15 Q. At one person's face?

16 A. At one person.

17 Q. Not two?

18 A. That's correct.

19 Q. And so you never saw the other person's face;
20 right?

21 A. No, all I seen was his back.

22 Q. So when they were showing you a lineup, obviously,
23 they couldn't expect you to be trying to identify the person
24 that you had never seen; right?

25 A. That's correct.

26 Q. So what happened on this date over a month, what is
27 it, a month and ten days later when you are asked to make
28 this identification, you are shown pictures; is that correct?

29 A. That's correct.

1 Q. And when you are shown these pictures, first of
2 all, you are shown a set of pictures, and in that first set
3 of pictures that you saw -- by the way, were these pictures
4 black or white or were they colored?

5 A. I honestly could not tell you. I really don't
6 remember.

7 Q. Well, back in '97 your memory would have probably
8 been a little fresher; is that correct?

9 A. Probably, but I really don't, I really don't
10 remember whether they were black or white.

11 Q. Charles Collins, page 445, the 1997 hearing.

12 BY MR. EVANS: Your Honor, may we approach the
13 bench?

14 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
15 THE JURY AS FOLLOWS:)

16 BY MR. EVANS: Your Honor, to start with, this
17 is getting ridiculous on repetitive. He cannot
18 impeach someone that says I can't remember. If he
19 asks him and he says he didn't say something, then
20 he can impeach him. But he cannot impeach him with
21 a prior statement where he says, "I can't
22 remember." The rules are very clear on that.

23 BY MR. LUMUMBA: I think that used to be the
24 rule, but if I understand correctly, Judge, they
25 have relaxed the rules on that in order to do away
26 with so much formality.

27 BY THE COURT: Let me ask you this.

28 BY MR. LUMUMBA: I can show it to him to
29 refresh his recollection.

1 **BY THE COURT:** Why don't you just show him the
2 picture and ask him if that's what he has seen, and
3 let's don't go into the testimony stuff.

4 **BY MR. EVANS:** That's right. And we are going
5 to keep on, and he is going to bring out--

6 **BY THE COURT:** --Well, he does that at his
7 peril. I have already made--

8 **BY MR. EVANS:** --I know, Your Honor. I just,
9 and I think I know that we are going to be safe as
10 far as the record, but it just worries me that
11 there is an attempt to try to bring something out
12 that may be a problem.

13 **BY THE COURT:** Well, I don't think that an
14 attempt has been made, but I think there is a
15 danger there. The other-- but the identification
16 by this man is an important part of this case. So
17 he is entitled to go into it.

18 **BY MR. EVANS:** I don't have any--

19 **BY THE COURT:** --but there is a different --
20 my suggestion, Mr. Lumumba, is rather than go
21 through all that transcript with him, just hand him
22 that and see if that is the one he saw. If he says
23 it is not, then you have got a way to come back.

24 **BY MR. LUMUMBA:** Judge, let me ask you, let me
25 say this. Here is the problem I have. If he says
26 it is, then I have got a problem with it because I
27 don't believe it is the one he saw. Now let me
28 finish. Let me finish.

29 **BY THE COURT:** You are entitled. Okay.

1 BY MR. LUMUMBA: But the reason I don't
2 believe it is is because, and this is why they are
3 up here objecting. He stated very clearly at his
4 first trial that he did not see anything but black
5 and white pictures. The pictures that they are now
6 claiming they showed him are color pictures.

7 BY MR. EVANS: Which has his name of where he
8 I.D.'d; they are. They are.

9 BY THE COURT: One of them is black and white.

10 BY MR. EVANS: And he tried to confuse him
11 before.

12 BY MR. LUMUMBA: There is no black and white
13 version of these pictures.

14 BY MR. HORAN: No, no. He said another set of
15 pictures that he saw. He saw the black and white
16 pictures.

17 BY MR. LUMUMBA: But the black and white
18 pictures don't have his signature on it.

19 BY MR. HORAN: I understand that. It was
20 asked at the prior trial. He saw two sets. He
21 just, he says I looked at some that were black and
22 white.

23 BY MR. LUMUMBA: He says, All I saw were black
24 and white pictures. That's what he says here.

25 BY MR. HORAN: Well, they are. You know--

26 BY THE COURT: --Here is what you have got to
27 do. Here is what my ruling is. You are going to
28 have to go into it with the pictures, show him what
29 that is, then if it is contrary to what maybe he

1 has testified before, you are entitled to impeach
2 him there.

3 BY MR. LUMUMBA: That is fair.

4 END BENCH CONFERENCE

5 BY MR. LUMUMBA:

6 Q. First of all, Mr. Collins, the first set of
7 pictures that they showed you were pictures where you pointed
8 to two of the men in the picture photo and say that resembles
9 the person but the hairline is different; isn't that right?
10 You pointed to one and three in the photos and said that
11 resembles the person, but the hairline is different. Isn't
12 that correct?

13 A. I think the words I said was that the complexion
14 is, you know, is similar.

15 Q. Okay.

16 A. But the hairline is different, yes.

17 Q. Then you pointed to a person and then you said that
18 that looks like the person or that, let me see. I don't want
19 to get your words--

20 BY MR. EVANS: --Your Honor, again I object.
21 I would like for him to point out which one of the
22 lineups he is talking about since we are talking
23 about two.

24 BY MR. LUMUMBA: Well, then--

25 BY THE COURT: --No. He is in charge of his
26 cross-examination. He can ask this question.

27 BY MR. EVANS: Yes, sir, but the witness has
28 got to know which to answer to.

29 BY THE COURT: Well, then he can say he

1 doesn't know.

2 BY MR. LUMUMBA:

3 Q. I'm talking about the first picture show-up they
4 showed you on that day, the first one they showed you which
5 had six people in it, okay. That's what I'm talking about.
6 That's the one I am talking about. That's the one I want you
7 to focus on, okay. And what you said at that time -- now you
8 see if, now you correct me if this is not what you said when
9 you looked at that first photo. One and three resembles but
10 the hairline was further back. Then you pointed to six, and
11 do you know a person by the name of Doyle Simpson?

12 A. I didn't at that time.

13 Q. You pointed to Doyle Simpson's -- you know him now;
14 right?

15 A. I know him now, yeah.

16 Q. You pointed to his picture next; isn't that
17 correct?

18 A. I have no idea.

19 Q. And you said the hairline is like this. May have
20 appear, you said the person may have appeared a little
21 darker. That's what you said; right?

22 BY MR. HORAN: Your Honor, can we identify--

23 BY THE WITNESS:

24 A. --I really don't, I really don't know about that.
25 I really don't know--

26 BY MR. HORAN: --I am having a problem--
27 excuse me. I hate to interrupt you, but what
28 exhibit are you making reference to?

29 BY MR. LUMUMBA: I am making reference to some

1 notes which are not exhibits, Judge, but I'm not--

2 BY MR. HORAN: --no, I mean--

3 BY MR. LUMUMBA: --But I'm not making-- no, I
4 am asking the question. It doesn't make-- I'm not
5 using this as an exhibit right now because this is
6 made by someone else who claims to have been there
7 and have taken notes.

8 BY MR. EVANS: If it was made by someone else,
9 we object. We need to go by what this witness says
10 of his memory.

11 BY THE COURT: Well, you can't read from the
12 notes then. If they are taken by somebody else,
13 you have got to ask questions.

14 BY MR. LUMUMBA:

15 Q. Okay, here is my question. Did you in that
16 particular first lineup indicate in pointing to Doyle Simpson
17 that even though the picture appeared to be, that it could
18 have been a little lighter than the person, but that looked
19 like the person that you saw. Did you say that?

20 A. I cannot say, I cannot, I can't answer that. I
21 don't know.

22 Q. Didn't you, in fact, say that the shape of the face
23 was the same face; isn't that correct?

24 A. I could not tell you. I don't remember that.

25 Q. And then after saying, then didn't you say that you
26 weren't quite sure. Didn't you say that? That you had
27 pointed to Simpson, but you said you weren't quite sure?
28 Didn't you say that?

29 A. I don't know. I cannot remember saying that.

1 Q. But you know that they never asked you after you
2 pointed to that man, they never asked you at that time, "Do
3 you know Doyle Simpson?" They never said that, did they?

4 A. I don't even remember anybody mentioning Doyle
5 Simpson to me.

6 Q. After that, they gave you a second lineup; is that
7 correct?

8 A. I was shown two lineups now.

9 Q. So they gave you a second lineup; is that right?

10 A. I think that's correct.

11 Q. Okay. I am showing you now what I'm going to ask
12 to be marked as a proposed exhibit.

13 BY MR. EVANS: We agree that it can be
14 introduced into evidence, Your Honor.

15 BY THE COURT: Well, I don't know-- I never
16 heard of one offered as a proposed exhibit. It is
17 either for identification or--

18 BY MR. LUMUMBA: --I am offering it for
19 identification purposes.

20 (The Court Reporter confers with the Court
21 briefly.)

22 BY THE COURT: It is marked for
23 identification?

24 BY MR. LUMUMBA: Oh, it is already marked?

25 BY MR. EVANS: It has been marked for
26 identification.

27 BY MR. LUMUMBA: I'm sorry. I'm sorry.

28 BY THE COURT: Well, the Court Reporter says
29 it has already been marked as an exhibit.

1 BY MR. EVANS: It is one of the State's
2 exhibits, Your Honor.

3 BY THE COURT: Okay, you have got no objection
4 to that being admitted?

5 BY MR. LUMUMBA: No.

6 BY THE COURT: Okay, it is admitted as an
7 exhibit if I have not already ruled on that.

8 BY MR. LUMUMBA: I don't think you have ruled
9 on that, Judge.

10 BY THE COURT: Okay, well, I do now.

11 (PHOTO LINEUP SHOWN TO PORKY COLLINS WAS
12 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT S-91.)

13 BY MR. LUMUMBA:

14 Q. After we go through this, I'm going to come back
15 and show you what I believe to be a xeroxed copy of the first
16 lineup you saw, okay? But right now focus on that second
17 lineup; is that correct? Do you understand what I'm saying?

18 A. Okay.

19 Q. Is that okay?

20 A. Uh-hum.

21 Q. Okay. And I'm going to show you this, what is now
22 marked as Exhibit number 91, Exhibit number 91 and ask you if
23 you can identify this?

24 A. I remember these pictures. I don't know if these
25 are the same pictures or not, but I remember these pictures.

26 Q. Now are those pictures there in black and white or
27 are they colored?

28 A. They are colored.

29 Q. And were the pictures you saw color like those

1 pictures, or were they black and white?

2 A. I have seen pictures just like this. Now I can't
3 remember whether those were colored or black and white
4 pictures I saw the first time. I, I can't remember.

5 Q. Okay. Well, visiting again here your testimony at
6 that hearing on page 449. You said at that time, didn't you,
7 "I believe the pictures I seen was black and white."

8 Question: "All right, so you don't know if that's the same
9 one or not?" because they were showing you these pictures
10 then at that hearing, weren't they?

11 A. I don't know if these were the same pictures or
12 not, but they was pictures like this.

13 Q. Okay, we can find out. But then after you said all
14 right or after they said, "All right, so we don't know if
15 that's the same ones or not?" And then you said, "This is
16 not the same ones. The pictures I seen were black and
17 white." Isn't that what you said there?

18 A. I believe I was shown some black and white
19 pictures. I'm not, I think, I want to, and I think I made
20 the remark that I couldn't, I couldn't tell much about them
21 because they were black and white.

22 Q. I see. So you didn't, you would have only signed
23 the pictures that you were shown. You wouldn't have signed
24 some other kind of pictures, would you?

25 A. I wouldn't hardly think so. I don't know. I don't
26 remember signing any pictures but one. One, I believe that's
27 the only one I signed. I remember signing one or maybe two;
28 I don't know.

29 Q. All right. Now in any event, those pictures there,

1 are those the ones you saw?

2 A. I don't know if these are the pictures, but I saw
3 some pictures like this.

4 Q. Now it would be safe to say that based on the head
5 shot of the person in number 4, his head looks totally bigger
6 than anybody else in these photographs. Isn't that correct?

7 A. That's correct.

8 Q. It stands out; isn't that correct?

9 A. It's bigger.

10 Q. And none of these are even approach that; isn't
11 that correct?

12 A. Not according to the size, no.

13 Q. And when you first saw those photographs, what you
14 said actually is you pointed to number 4, the place, the
15 person that we just looked at whose head stands out; isn't
16 that correct?

17 A. That's the one that I pointed to, but that is not
18 the reason I pointed to it.

19 Q. Okay, well, that is not what I'm asking you. But
20 that is okay though because you can always explain your
21 answer, so excuse me for even saying that. But in any event,
22 number 4 you now know is my client Mr.--

23 A. I do now.

24 Q. Okay. And you pointed to that one and you say
25 based-- and here again, you are looking at pictures -- you
26 have already looked at one set of pictures; is that correct,
27 at the time you are looking at this?

28 A. I really. I looked at two sets of pictures. Now I
29 don't remember that now.

1 Q. But the other set of pictures you have already said
2 that somebody in there looks like the person; isn't that
3 correct?

4 A. I said the complexion looked like.

5 Q. Okay. And you said the person looked like the
6 person, same round face and everything. Didn't you say that?

7 A. I don't remember saying that.

8 Q. Okay, well, we will see. But then at this point
9 you said to number 4, I think that is him. That is the first
10 words out of your mouth; right?

11 A. It may have been.

12 Q. Not that it was him, but you think it's him; right?

13 A. It may have been.

14 Q. And then you go on to say, "He was about my
15 height." Is that correct?

16 A. I think so.

17 Q. "The complexion is about right," is what you said;
18 right, at that time? You said, "The complexion is about
19 right"; is that correct?

20 A. I think so.

21 Q. Okay. Now keep that in mind that you said at that
22 time the complexion is about right. "I believe that's him."
23 "It looked like him," is what you said; right?

24 A. I believe that's correct.

25 Q. Now unlike the other photos, then to somebody who
26 is showing you these pictures say, Do you know Curtis
27 Flowers? You remember being asked that question; right?

28 A. Yes, I was.

29 Q. And only after you are asked Curtis Flowers do you

1 make the statement, "I know that is the person I saw outside
2 of Tardy's"; isn't that correct?

3 A. When they asked me if I knew Curtis Flowers, I told
4 them I did not know Curtis Flowers. I didn't never even,
5 didn't know he even existed in this world.

6 Q. Did you say at that point for the only time that I
7 know that is the person outside of Tardy's?

8 A. Would you rephrase that?

9 Q. Did you indicate after you were asked that question
10 that I know that's the person I saw out front of Tardy's?

11 A. I never called him by name.

12 Q. Well, not by name but the picture. That you know
13 that is the person you saw outside of Tardy's?

14 A. That is the picture I picked out right there.

15 Q. Did you indicate only after you heard his name that
16 you know that is the person that you saw outside of Tardy's?
17 That is my question. If you remember; if you don't know,
18 it's okay.

19 A. I don't even remember if they had asked me if I
20 knew Curtis Flowers at that time. I really don't know.

21 Q. Very good. Now let me ask you this. So basically
22 during the course of this showing of these two different
23 spreads you actually pointed, you literally pointed to two
24 different pictures. You actually pointed to four, but to two
25 of them you were saying they were a little bit different.
26 You remember saying that the people were a little bit
27 different; one and three were a little bit different because
28 the hairlines were receding; right? You remember that;
29 right? If you do, if you don't--

1 A. --I don't remember saying that.

2 Q. Okay. But you remember pointing to a person you
3 now know as Doyle -- you say you don't remember whether it
4 was Doyle's picture, but you remember pointing to a picture
5 saying that that looked like the person?

6 A. I believe I said that it was the complexion looked
7 like him.

8 Q. So you pointed to two different people because you
9 had pointed to a second person; is that correct, when you
10 pointed to Mr. Flowers; is that right?

11 A. I think that is correct with the same answer.

12 Q. But you were only looking for one person; right?

13 A. That's right.

14 Q. There was no lawyer there for Mr. Flowers at the
15 time; right?

16 A. Not that I, not that I know of.

17 Q. There was no record made of what was actually said
18 to you or what was actually shown to you, no recorded
19 record. In other words, they were not recording that at the
20 time that it was being done; isn't that correct?

21 A. You know, I couldn't really tell you. I really
22 couldn't. I really don't know.

23 Q. Okay. I believe you previously told us, Mr.
24 Collins, remember that hearing we just had back in January.
25 I think you told us at that time-- well, let me ask you this
26 first. The day, we had a hearing in January about this same
27 issue, about identification, about you pointing to photos
28 and stuff. You remember that. It was January right down
29 here--

1 A. --that's right--

2 Q. --I believe, in Gulfport?

3 A. That's correct.

4 Q. And at that particular time I asked you at that
5 time, I said, Mr. Collins, look. As Mr. Johnson-- now you
6 know Mr. John Johnson. He is the investigator for
7 prosecutor's office; right?

8 A. That's correct.

9 Q. And I was trying to see if he had talked to you
10 about the pictures, talked to you about your identification,
11 or suggested anything about it. You remember that; right?

12 A. That's correct.

13 Q. And I asked you at that hearing, I said, well, Mr.
14 Collins, did Mr. Johnson come by your house to discuss, you
15 know, the pictures with you? Did he come by your house and
16 discuss the pictures with you or the identification you made.
17 And you remember saying that you didn't remember or not that
18 you knew of, had Johnson been to your home or anywhere else
19 to discuss the pictures with you since the time that you were
20 originally shown them way back in '96. You remember saying
21 that; right?

22 A. I don't remember you asking me that question, that
23 particular question.

24 Q. Well, let us turn to that evidentiary hearing
25 transcript on page 80. From line 23, John -- that's his
26 first name; right? Is that Mr. Johnson's first name?

27 A. That's right.

28 Q. "John has never come by to discuss the photos with
29 you?" Answer: "Not that I know of." Is that what you said?

1 A. That's exactly right. And you said to my address.

2 Q. Oh, so what you are saying is he came by to discuss
3 them with you, but he didn't come to your home? Is that what
4 it was?

5 A. No. He showed me the back of what I assume was
6 some pictures where I initialed them. I never seen the
7 pictures.

8 Q. Okay, well, he just showed you the back of a
9 picture and didn't even show you the front?

10 A. He pulled it out of the envelope and said, "I just
11 want you to know these are the pictures that you looked at
12 because there is"-- and he says, "Are these your initials?"
13 And I said yes.

14 Q. Well, it was initials-- now this, this is
15 interesting because I want you to tell the ladies and
16 gentlemen of the jury that what you are telling them is that
17 he actually came out here and showed you some initials
18 without even showing you what the initials were on? Is that
19 what you are saying?

20 A. Oh, I could have looked at them, but I didn't.

21 Q. Did he show them to you? Did he show--

22 A. --he showed--

23 Q. --put them out there so you could see the pictures?

24 A. Yes, he did.

25 Q. And not only did he put them out there so you can
26 see the pictures; he did this at your home the day before the
27 hearing that I'm talking about; right? He came out to your
28 home the day before that?

29 A. That's correct. That's correct.

1 Q. And yet in the hearing that we were in, you
2 actually told me, and you were under oath at that time,
3 weren't you?

4 A. That's exactly right.

5 Q. And a person was taking notes just like this
6 person; right?

7 A. That's right.

8 Q. You are supposed to be telling the truth just like
9 you are supposed to be telling the truth now; right?

10 BY MR. EVANS: Your Honor, I object--

11 BY THE WITNESS:

12 A. --In my opinion I hold you the truth.

13 BY MR. EVANS: --There is no indication he is
14 not.

15 BY MR. LUMUMBA:

16 Q. But what you said was at that time, asked the
17 question, "John has never come by to discuss the photos with
18 you?" And you said, "Not that I know of"; right?

19 A. That's what I said.

20 Q. That's the day after he came to your house, showed
21 you the back of the pictures, and then the front of the
22 pictures?

23 A. I did not look at the front of the pictures, never
24 seen the front of the pictures.

25 Q. Was John the one that showed you the pictures on
26 August the 24th, '96?

27 A. I believe it was Wayne Miller of the Highway Patrol
28 and John Johnson, and it may have been somebody else in
29 there.

1 Q. John Johnson, the same guy; right?

2 A. Right, and Wayne Miller, I think of the Highway
3 Patrol. He was the one, he is the one that showed me the
4 pictures.

5 Q. By the way, Mr. Collins, once you finish seeing
6 these two men, you went back home; is that correct?

7 A. That's correct.

8 Q. And when you went back home, you changed your
9 shoes; right?

10 A. I changed clothes; that's right.

11 Q. No, you change your shoes too?

12 A. I changed my clothes too and I changed my shoes
13 too.

14 Q. Well, when you were asked to give a statement to
15 the police, you didn't tell them you changed your clothes,
16 but you did tell them you changed your shoes; right?

17 A. I believe I told them I was sitting there putting
18 my socks on when I heard it on the scanner.

19 Q. Exhibit for identification D-8. "When I went home,
20 I was in there getting some stuff."

21 A. That's right.

22 Q. "I had changed shoes."

23 A. That's right.

24 Q. And then you go into, "I was sitting there putting
25 my shoes on...." Is that correct?

26 A. That's right.

27 Q. You don't say anything about any other clothes
28 there?

29 A. Well, I had already done that.

1 Q. But you don't, you don't tell them about it; right?

2 A. Well, I didn't think that was important. I had a
3 man that was going to do some work for me that day, and he
4 was sitting there with me.

5 Q. But anyway, when you changed these shoes, that was
6 right back after you had come from the Tardy area?

7 A. No, it was not. That was before I went to the
8 Tardy.

9 Q. Now that was right after you had seen these two
10 men; right?

11 A. That was right after I saw those two men.

12 Q. Okay.

13 A. Then I went back-- when I heard that on the
14 scanner, I went back up to the cleaners. I was going to go
15 by up there to see what was going on. That was when I was
16 changing clothes and shoes.

17 BY MR. LUMUMBA: I'm going to ask this be
18 marked for identification purposes.

19 BY THE COURT: Okay, the jury needs to take a
20 break right quick. So you can go ahead and do
21 that, and we will take about-- let's try to make it
22 as short as we can, 5 or 10 minute break, okay.

23 (FOLLOWING THE MORNING RECESS ON THURSDAY,
24 MARCH 25, 1999, THE TRIAL RESUMED IN OPEN COURT
25 WITH ALL COUNSEL, THE DEFENDANT AND THE JURY
26 PRESENT AND WITH **CHARLES "PORKY" COLLINS** STILL ON
27 THE WITNESS STAND:)

28 BY MR. LUMUMBA: I have, I am requesting that
29 the exhibit that I just presented to the Court

1 Reporter be marked for identification.

2 BY THE COURT: Okay.

3 (A COLOR PHOTO LINEUP WAS MARKED AS
4 DEFENDANT'S EXHIBIT D-10 FOR IDENTIFICATION.)

5 BY MR. LUMUMBA:

6 Q. For identification, Mr. Collins, this has been
7 marked as D-10 for identification. And I am showing you-- it
8 appears to be a group of pictures, and I ask you if you
9 recognize having been shown those before?

10 A. I was shown some pictures, but I honestly couldn't
11 tell you if this was them or not.

12 Q. All right.

13 A. It could have been, but I could not, you know--

14 Q. And you have also told me as to the exhibit which
15 is now S-91, you really can't tell me for sure whether these
16 were the pictures you were shown or not, these exact
17 pictures; right?

18 A. I was shown pictures like this, but I couldn't tell
19 you if them are the exact pictures, no.

20 Q. All right. Okay. I'm going to show you another
21 exhibit. This is State's Exhibit number 1, and it purports
22 to be a picture of the outside of Tardy's. I'm going to ask
23 you if you can identify in that exhibit that is State's 1,
24 can you see in that State's 1 where the cleaners is that you
25 were going to?

26 A. It's right there. (Pointing.)

27 Q. Okay, that is like on the other side of Tardy's;
28 right?

29 A. It's right straight across the little street there.

1 Q. The street there. That's the next thing I'm going
2 to do.

3 (Mr. Lumumba and Mr. Evans confer out of the
4 hearing of the Court Reporter.)

5 (TWO PHOTOGRAPHS WERE MARKED AS DEFENDANT'S
6 EXHIBITS D-11 AND D-12 FOR IDENTIFICATION.)

7 BY MR. LUMUMBA:

8 Q. Mr. Collins, I'm just trying to be able to see if
9 we can see in the pictures a couple of things you talked
10 about. This S-4, would that be the cleaners right there?

11 A. That's correct.

12 Q. Okay, that is the cleaners. You see a little bit
13 of Tardy's, and then you see the cleaners there; right?

14 A. That's correct.

15 Q. And there is a street in between there; right?

16 A. Yeah, that runs east and west.

17 Q. Well, now I am showing you what is D-11. Is that
18 the street that runs? If you know?

19 A. Yeah, that is the street that runs down east and
20 west.

21 Q. So D-11 is the cleaners, and that shows the street
22 that we saw on the map there. Carrollton, I think they
23 called it on the map; is that correct?

24 A. I think so.

25 Q. Okay, that runs right along between Tardy's and the
26 cleaners; right?

27 A. Yeah, I think.

28 Q. On this picture, on this picture am I pointing to
29 the place where the cleaners is?

1 A. Yeah, that's the front door to the cleaners right
2 there.

3 Q. Okay, the street right next to it is the street
4 that runs between it and Tardy's; is that correct?

5 A. Well, sort of. It's on a, you know, offset there a
6 little bit. But it is pretty well much so, yeah.

7 Q. Okay, well, I'm going to just go over to the jury
8 like here so they can see this.

9 BY MR. LUMUMBA: I would offer this into
10 evidence, D-11.

11 BY MR. EVANS: No objection.

12 BY THE WITNESS: Do you want this one too?

13 **BY THE COURT:** All right, let it be marked.

14 (PHOTOGRAPH PREVIOUSLY MARKED AS DEFENDANT'S
15 EXHIBIT D-11 FOR IDENTIFICATION WAS NOW RECEIVED IN
16 EVIDENCE.)

17 BY MR. LUMUMBA: I am also offering S-4 into
18 evidence which has been marked for identification.

19 **BY THE COURT:** No objection?

20 BY MR. HORAN: No.

21 BY MR. EVANS: None.

22 **BY THE COURT:** Let it be marked.

23 (PHOTOGRAPH PREVIOUSLY MARKED AS STATE'S
24 EXHIBIT S-4 FOR IDENTIFICATION WAS NOW RECEIVED IN
25 EVIDENCE.)

26 BY MR. LUMUMBA:

27 Q. Finally, you talked about a-- I called it an
28 island, you know, but a little center piece in the street
29 that cars park along; is that right? Is that it or do you

1 know?

2 A. This is it. This is going up to, I don't know if
3 that is-- yeah, there is the depot. Yeah, this is it right
4 here.

5 Q. So the railroad tracks should be on the right side
6 of that?

7 A. The railroad tracks is going to be on the right
8 hand side, and Tardy's is going to be on the left-hand side
9 right here.

10 Q. So you would have been on the side of the street
11 closest to Tardy's; is that correct?

12 A. Yeah. Right.

13 Q. Right in that?

14 A. Right in that vicinity there.

15 BY MR. LUMUMBA: Okay, I don't know if you
16 have seen D-12 for identification.

17 BY MR. EVANS: Yeah. I have no problem with
18 that.

19 BY MR. LUMUMBA: I move its admission into
20 evidence also.

21 BY THE COURT: Let it be marked.

22 (PHOTOGRAPH PREVIOUSLY MARKED AS DEFENDANT'S
23 EXHIBIT D-12 FOR IDENTIFICATION WAS NOW RECEIVED IN
24 EVIDENCE.)

25 BY MR. LUMUMBA: Judge, can I ask the witness
26 to step down just for a second?

27 BY THE COURT: Yes.

28 BY MR. LUMUMBA:

29 Q. Please step down if you can and approach the

1 jurors.

2 A. (Witness complies.)

3 Q. The first exhibit we have now that has been
4 admitted into evidence is D-9. Do you see that D-9 right
5 down there?

6 A. (Witness nods his head.)

7 Q. Okay, now this is the map, and it is going to be
8 kind of hard to do. We are going to pass it to the jury, but
9 before we do, we will try to point some things out. What we
10 have written up here in the corner, what I have written at
11 your direction is route taken by Mr. Collins. And then we
12 pointed to at least three different spots on that route; is
13 that correct?

14 A. Yes, sir. Yeah, that's correct.

15 Q. And that is the route which essentially points us
16 to 51, the route you took from Bell Street all the way where
17 you went down Summit Street and then turned and you went down
18 what you call Main but which is actually Front Street?

19 A. Correct.

20 Q. Okay, let's just show this to the jury. Route, and
21 I'm going to pass it, but I am just showing it. "Route taken
22 by Mr. Collins" is written up here at the top. Then what we
23 have is arrows pointing to Bell Street where it starts going
24 up just right above there to Applegate or 51; is that right,
25 Mr. Collins?

26 A. That's correct.

27 Q. And it goes all the way down here to Summit
28 Street. I think there is another arrow pointing, and it
29 turns right. You see it going here and wind up on Front

1 Street, okay? Okay, then at the bottom here, Mr. Collins,
2 what we have is something called, in bad handwriting it says,
3 "Other route"; is that right?

4 A. That's what you have got, yes.

5 Q. Okay, and then you have arrows pointing to that
6 other route; is that correct?

7 A. That's correct.

8 Q. And we have Bell Street here again, and we
9 indicated that you could go up Bell Street and turn on
10 something called Simpson Drive; right?

11 A. Yes.

12 Q. Which it looks to be like one block down from Bell
13 Street. Is that about right?

14 A. That's one block out.

15 Q. Okay, and then you can go straight down that
16 Simpson Drive and hit Church Street; right?

17 A. That's Old Highway 51, yes.

18 Q. That drives you right down to in town. That takes
19 you right into town to that street that we have discovered is
20 Carrollton?

21 A. That's correct.

22 Q. And Carrollton takes you right to the cleaners;
23 right?

24 A. That's correct.

25 Q. Without even passing Tardy; right?

26 A. That's correct.

27 Q. Without going north of Tardy's; right?

28 A. That's correct.

29 Q. Okay. I will pass this to the jurors. Could you

1 stay, stay there just for a second. We are going to get rid
2 of all these right now. Now this is, this is a picture we
3 have already decided, you can see a little tip of Tardy's,
4 but more importantly, to the left of where you have got a
5 Tardy's sign, you can see that cleaners; right?

6 A. That's correct.

7 Q. You see that cleaners. It looks like a white
8 building on this picture; right?

9 A. That's correct.

10 (Mr. Lumumba holds photograph in front of the
11 jury and then passes it to the jury.)

12 BY MR. LUMUMBA: I'm going to pass that too.

13 Q. Now that is what-- I have been saying this and
14 that, but let me just state the exhibit number. Exhibit
15 number of this one is S-4, and the exhibit number on the
16 first one was D-9. Then we are going to look at D-11. What
17 we have in D-11, we see the white building again; is that
18 right?

19 A. Correct.

20 Q. And that's the cleaners. Then we see that street
21 called Carrollton; am I correct?

22 A. That's correct.

23 Q. So and we don't see Tardy's in this picture?

24 A. There's Tardy's right there.

25 Q. Well, you see a little tip of it, like the back of
26 it?

27 A. The side of it.

28 Q. The side of it, the side, okay. The street is
29 right between. What that shows really is the street that

1 runs between Tardy's and the cleaners; right? And that's the
2 street you did not take at the time you passed Tardy's and
3 saw the split second glance; right?

4 A. That's correct. I did not go down that street.

5 Q. Okay. And finally, that is the street you would
6 have taken if you would have taken the other route that we
7 put on the map; is that correct?

8 A. If I had taken the other route.

9 Q. Now this here is the little area where-- what is
10 this like a pole in the middle of the street; is that right?

11 A. I guess, they have changed it somewhat now, and I
12 can't remember, but I believe it was just a pole there. I
13 don't remember whether it was a light on it or not, but it
14 was several of these up through there with trees planted, you
15 know.

16 Q. And you can see some trees in the background?

17 A. Right.

18 Q. Anyway, what this shows is kind of like what I call
19 an island. Some people might call it the center piece or
20 whatever; is that right?

21 A. Whatever, divider.

22 Q. Divider; that is probably what you should call it.

23 (Photograph held in front of the jury.)

24 Q. We will pass that down. That is D-12. Okay.

25 A. (Witness resumes witness stand.)

26 Q. Now S-91. (Pause) Well, I'm going to also-- you
27 have already identified S-91. You said-- well, you didn't
28 identify it. You said you can't say for sure if these are
29 the pictures you saw?

1 A. No, I cannot. I saw some pictures like that, but I
2 couldn't swear that those are the pictures.

3 Q. We will leave that alone. Okay. Now Mr. Collins,
4 finally, at the first hearing when I asked questions, (Pause
5 while Counsel shows the transcript to the witness.) On many
6 different occasions you have been asked questions and what
7 you have responded-- and listen to my question carefully.
8 You haven't responded that that was the man out there. What
9 you have said is that looks like him. Sometimes you said, "I
10 think that's him." That's true, isn't it?

11 A. (Pause) At some time or another I may have said
12 something like that. I really couldn't tell you.

13 Q. This is on page 443 of this hearing that happened
14 in 1997. And the question was, "All right, sir. But I wrote
15 down, I believe, what you said today, 'looks...like him.'
16 Wasn't that what you testified to, Mr. Collins?" Answer:
17 "That's exactly right." That's what was said there; is that
18 correct?

19 A. That's correct.

20 Q. Okay. Earlier on in the transcript (Pause).
21 Earlier in this transcript way back in '97, you were asked
22 the question, "Were you able to positively identify one of
23 the two individuals that you saw there?" Answer: "I picked
24 out a photograph that I believe was one of them." That's
25 what you said; right?

26 A. That's correct.

27 Q. Question: "I want you to look around in the
28 courtroom and see if you see one of those two individuals
29 that you saw standing in front of Tardy Furniture." Is that

1 correct?

2 A. That's correct.

3 Q. Now you were in a courtroom at this time, and you
4 pretty much know that the lawyers sit at a table; is that
5 right?

6 A. That's correct.

7 Q. And right next to them, as far as the defense
8 lawyers are concerned, the defendant sits there; right?

9 A. That's correct.

10 Q. Then you said, "The man I seen didn't have glasses
11 on that day." Is that what you said?

12 A. That's correct. He did not have glasses on that
13 day.

14 Q. "All right. Other than the glasses, do you see the
15 person in the courtroom today?" Your answer was, "I see a
16 man I think is him." Is that what you said?

17 A. That's correct.

18 Q. Then they said, "Would you point to him and
19 identify him, please?" Then you pointed to Mr. Flowers; is
20 that correct--

21 A. --That's correct--

22 Q. --in this courtroom. Okay. Then if you look at
23 here, it says here, "The Defendant removed his glasses."
24 That's what it says; right?

25 A. He did.

26 Q. Okay. Then you went on to say, "That looks a lot
27 like him." That's all you said; right?

28 A. That's correct.

29 Q. "What was the person doing that you" saw? You

1 said, "He was standing beside a car." That is not what I am
2 really trying to get to. That is not relevant. But your
3 response even then is, "That that looks a lot like him." Is
4 that correct?

5 A. That's correct.

6 Q. You have seen people that look like other people
7 before?

8 A. Well, certainly.

9 Q. Seen people that look a lot like other people in
10 your view. Sometimes somebody looks like somebody to you,
11 but don't look like them at all to other people; is that
12 right?

13 A. That could very well be possible.

14 Q. For instance, you picked out two people. One you
15 said looked like the person. You actually picked out two
16 people on the day, two different people that you said looked
17 like the person on that day; is that correct?

18 A. I don't think that's what I said.

19 Q. Oh, okay. Well, we will get to that. Now I'm not
20 talking about at the hearing, but when you did the
21 photographic--

22 A. --That's when I'm talking about.

23 Q. Okay, good. And then at other points you have
24 continued to say, you know, things like when you even talked
25 about it today when the District Attorney asked you, you
26 didn't say, "Well, that's the man." What you said, "I will
27 always believe that's the man." That's what you said; right?

28 A. (No response.)

29 Q. That's what you said that yesterday when he asked

1 you that?

2 A. I believe I said, "I believe that is the man and I
3 will always believe it." I believe that's what I said.

4 Q. Of course, you have been looking at him in court.
5 This person that you saw that day in that split second
6 glance, you had never seen him before in your life; is that
7 right?

8 A. As far as I know, that's correct.

9 Q. Now you have been looking at Mr. Flowers. He has
10 been sitting over there at that table. You have seen him
11 several different times; right?

12 A. Yeah, but as far as just sitting here looking at
13 him, no, I haven't been sitting here looking at him.

14 Q. Well, he has been there for you to look at; right?

15 A. Well, that is-- you are correct.

16 Q. Right here, for instance, you asked him, "But you
17 can't sit there under oath and swear that this is the man you
18 saw up there on Front Street that morning?" Answer. All I
19 can say--excuse me. "All I can tell you," and this is on page
20 444, by the way. "All I can tell you is he looks like him."

21 A. That's correct.

22 Q. So that is true?

23 A. That's correct. That's what I said that day.

24 Q. That was in '97 or so?

25 A. That's right, in Tupelo.

26 Q. Just recently here in a hearing we had here in 1999
27 you were asked by myself, were you, "At no time did you say
28 you were certain that he was the man; right?" And your
29 answer was here again under oath just a month or so ago--

1 well, this is March-- actually a couple of months ago. "I
2 told them I believed that was him." That's what you said;
3 right?

4 A. I guess that's what, I think that's what-- yeah,
5 that's what I told you.

6 Q. "At any time did you say you were certain that that
7 was him?" "All I ever told them was I believed that was
8 him." Question: "Well, actually you didn't say, 'I believe
9 it was him.' You said, 'I think'?" "Well, maybe I said, 'I
10 think it's him.'" That's?

11 A. Okay.

12 Q. Now--

13 BY THE WITNESS: Your Honor, I'm going to have
14 to use the rest room.

15 BY MR. LUMUMBA: Can you hold for one
16 question? I will be finished with one question.

17 BY THE COURT: All right, let him ask you one
18 more question.

19 BY MR. LUMUMBA:

20 Q. If you can. I don't want to hold you.

21 A. Well, let's try.

22 Q. Okay, I don't want to hold you. The one question I
23 was going to ask is this. Now when you gave a description
24 of-- do you remember you gave a description of Ms. Rigby and
25 what she had on that day, Carmen Rigby?

26 A. Yes, I do.

27 Q. You were very detailed. You pointed out that she
28 had pink and pink; is that right?

29 A. That's correct.

1 Q. And you talked about, I think you talked about her
2 fluffing her hair. And you remembered all that; is that
3 correct?

4 A. That's correct.

5 Q. You remembered a whole lot of things about actually
6 her jingling keys and all that kind of stuff?

7 A. That's correct.

8 Q. I see. And then on the other hand, you never did
9 say what these men had on; is that correct?

10 A. I couldn't see what they had on.

11 Q. And you never said, never described one of them's
12 eyes or face or anything like that?

13 A. Well, I couldn't have seen their eyes from where I
14 was at.

15 Q. You didn't see that?

16 A. No.

17 BY MR. LUMUMBA: Okay. All right, I have no
18 further questions.

19 BY THE COURT: Do you have any redirect?

20 BY MR. EVANS: Yes, sir.

21 BY THE COURT: Okay. Mr. Collins, I'm going
22 to let you go to the rest room. We will just stay
23 here until he gets back.

24 BY THE WITNESS: Out this way or?

25 BY THE COURT: You go with the bailiff. He is
26 going to show you.

27 (WHILE THE WITNESS WAS OUT OF THE COURTROOM,
28 THERE WAS THE FOLLOWING CONFERENCE AT THE BENCH OUT
29 OF THE HEARING OF THE JURY:)

1 BY MR. LUMUMBA: I'm objecting to-- I
2 understand that they have a right to put the
3 statement in the context and use other parts of the
4 statement to do that. I have no problem with that,
5 about them using the statement, his statement, Mr.
6 Collins' statement. I have no problems with them
7 using anything to put it in context which is
8 relevant to it. My objection would be if they
9 attempt to use something which is on a wholly
10 unrelated question. For instance, he in this
11 statement at several points, they are talking about
12 going to Fuzzy's and finding out that a guy had
13 reported a gun that was stolen and running back and
14 forth to the police talking about the stolen gun.

15 BY THE COURT: That wouldn't be proper
16 redirect anyhow.

17 BY MR. LUMUMBA: Right. So that is the only
18 thing that I have a problem with. But anything
19 else that they want-- I just wanted to say in
20 advance so I didn't have to jump up.

21 BY MR. EVANS: I don't know what all we are
22 going to go into, but he brought the statement up;
23 we didn't.

24 BY THE COURT: Right, but he didn't bring up
25 the part of the statement about going into Fuzzy's,
26 and it is what he testified to, not what the
27 statement, because the statement is not in
28 evidence, is it?

29 BY MR. LUMUMBA: No.

1 BY MR. HORAN: It is marked.

2 BY THE COURT: Yeah, so it would only be as to
3 what he has actually testified to that you can go
4 into.

5 BY MR. EVANS: Or something related toward to
6 what he has testified to.

7 BY THE COURT: Don't go into changing his
8 shoes, okay? (Laughter.)

9 BY MR. LUMUMBA: All right now. That change
10 of shoes might be important later on.

11 BY THE COURT: It may be.

12 BY MR. EVANS: Your Honor, there is one thing
13 while we are up here, and you may want to do this
14 out of the presence the jury. You may want to get
15 him to come up here, but I think, I want to be
16 safe. I'm going to ask him about some prior
17 hearings, and I want to make sure that he knows not
18 to mention the other trial.

19 BY MR. LUMUMBA: Okay. I don't have any
20 problem with that. If you want to, if you want to
21 have him come to the bench and just tell him.

22 BY MR. EVANS: Because I don't want him to
23 accidentally say something.

24 BY THE COURT: I don't want to do that in this
25 courtroom.

26 BY MR. LUMUMBA: Okay. We are willing to go
27 back--

28 BY MR. HORAN: --Maybe, Judge, it would be
29 easier maybe if the Court went out and told him,

1 and we, you could represent to us what you told him
2 and we may or may not need to be present.

3 **BY THE COURT:** Well, I don't know.

4 **BY MR. LUMUMBA:** I have no objection to going
5 with them and them telling him. Would that be a
6 problem?

7 **BY MR. HORAN:** Just us?

8 **BY THE COURT:** Okay. Let's do it that way.

9 **BY MR. EVANS:** Where did he go? In the back?

10 **BY THE COURT:** He went that way.

11 **END BENCH CONFERENCE.**

12 **BY THE COURT:** We will be back, unfortunately
13 for y'all.

14 (THE COURT AND ALL COUNSEL LEFT THE COURTROOM
15 BRIEFLY, AND UPON THEIR RETURN MR. CHARLES "PORKY"
16 COLLINS RESUMED THE WITNESS STAND FOR THE
17 FOLLOWING:)

18 **BY THE COURT:** All right, Mr. Evans.

19 **BY MR. EVANS:** Thank you, Your Honor.

20 **REDIRECT EXAMINATION BY MR. EVANS:**

21 Q. Mr. Collins, I will try to be short. There are a
22 few things I want to go back over with you. You have been
23 asked repeatedly and repeatedly about different things that
24 you have said. Without going into all of it, you have gone
25 through this numerous times; is that correct?

26 A. That's correct.

27 Q. You told the officers on March the 10th what
28 happened; is that right?

29 A. (No audible response.)

1 Q. That is one time that you talked to them. This is
2 the statement I believe Mr. Lumumba introduced?

3 A. March the 10th of?

4 Q. Of '97.

5 A. This is?

6 Q. This date up here.

7 A. (Pause while the witness reads.)

8 Q. That is just one of the times that you have talked
9 about this; is that correct?

10 A. That's when I talked to Mr. Lumumba?

11 Q. No, no.

12 A. Oh.

13 Q. To Mr. Johnson. This is the statement Mr. Lumumba
14 was showing you while ago.

15 A. I'm not sure about that date, but I am sure it may
16 be right. I'm not sure about that date. I couldn't tell you
17 about that date.

18 Q. All right. You also talked to officers on the day
19 the crime was committed; is that correct?

20 A. That's correct.

21 Q. And you have told what happened at other times; is
22 that right?

23 A. Yeah, I talked to-- that morning, the third time
24 that I went up there, that's when I came up Church Street,
25 and when I turned on Carrollton Street that he is talking
26 about, that's when James Taylor Williams, the Highway
27 Patrolman was standing out--

28 BY MR. LUMUMBA: --Objection, Judge. That
29 is--

1 BY MR. EVANS: To what?

2 BY MR. LUMUMBA: I think we are getting into
3 an area which was not covered on cross-
4 examination. We are talking about other people and
5 maybe what other people said. Maybe my objection
6 is a little too quick.

7 BY THE COURT: Okay, if it is hearsay, of
8 course, he can't testify to it.

9 BY MR. EVANS: I think he was just stating
10 when the first time was he talked to the officers.

11 BY THE COURT: Yeah, okay.

12 BY MR. LUMUMBA: Okay, I have no problem with
13 that as long as we don't--

14 BY THE COURT: --He can't testify as to what
15 was said. You can explain that to him.

16 BY MR. EVANS:

17 Q. All right, you can continue.

18 A. Can I answer?

19 Q. Yes, sir.

20 A. That's when I had heard on the scanner. I was on
21 my way back to the cleaners that time.

22 BY MR. LUMUMBA: That is--

23 A. And that's when James Taylor Williams, the Highway
24 Patrolman, was standing at the edge of Carrollton Avenue and
25 the back of Tardy Furniture Company. I had my window rolled
26 down, and his wife works at P & F, and he flagged me down and
27 told me to go--

28 BY MR. LUMUMBA: --Objection, Judge.

29 BY MR. EVANS:

1 Q. You can't, the Judge won't let you go into what
2 somebody else told you.

3 A. Oh, okay.

4 Q. But you told them what you knew at that point; is
5 that correct?

6 A. That's correct.

7 Q. And you have been asked numerous times in different
8 court hearings if this was the man that you saw in front of
9 Tardy Furniture; is that right?

10 A. That's correct.

11 Q. I want to direct your attention to page 76 of the
12 same proceeding that Mr. Lumumba has asked you about several
13 times, the one dated Wednesday, January 6, 1999, and I will
14 ask you to read, if you would, starting with this answer
15 right here on page 76, line 3. Read through line 7, if you
16 would, out loud.

17 A. "I told them, I said, 'I think that's him. I
18 believe that's him.' I said, 'I am sure that's him.' That's
19 the words I said." So you are-- "So you said you were sure
20 that was him?" "I said, 'I am sure that's him.'"

21 Q. Thank you. All of these statements that you have
22 given, you went through the same steps of what you were
23 doing, who you saw and what you did that day; is that
24 correct?

25 A. That's correct, to the best of my knowledge.

26 Q. You explained how you had to go pay your gas bill,
27 and you were on the way to Hunger's Dry Cleaners; is that
28 right?

29 A. That's correct.

1 Q. You explained how you had taken the car to have the
2 spark plugs in it; is that right?

3 A. That's correct.

4 Q. You explained--

5 BY MR. LUMUMBA: Judge, I think that is kind
6 of leading. I don't have--

7 BY MR. EVANS: --Your Honor, I will be glad to
8 just let him read his whole statement. I am trying
9 to make it shorter.

10 BY MR. LUMUMBA: Okay, I have no objection.

11 BY THE COURT: Okay, no objection. Go ahead.

12 BY MR. EVANS:

13 Q. You explained how you, when you went by the bank,
14 you looked at your watch, and it wasn't quite time for the
15 bank to open. It was 8:59; is that right?

16 A. It was either 8:58 or 8:59. It was one or the
17 other.

18 Q. And that is consistent with what you have testified
19 to this jury; is that right?

20 A. That's correct.

21 Q. You stopped at the post office to get a money
22 order; is that right?

23 A. That's correct.

24 Q. That's the same thing you have told this jury?

25 A. Yeah, and I give y'all a copy of the money order
26 showing where I purchased the money order.

27 Q. Yes, sir. "When I went to the post office, it was
28 around 9 o'clock or a few minutes after 9:00"?

29 A. That's correct.

1 Q. And you told this jury that same thing?

2 A. That's correct.

3 Q. You filled out your money order and you mailed it?

4 A. That's correct.

5 Q. That is consistent with what you have told this
6 jury?

7 A. That's correct.

8 Q. You started out the door, the breeze way; you met
9 Carmen Rigby?

10 A. She come in one side and I come in the other.
11 That's correct.

12 Q. You described in here what she was wearing. You
13 described to the officers, and you described in the other
14 testimony how she was twirling the keys, how she was fluffing
15 her hair up in the car. You described every detail to the
16 officers and prior hearings and two prior hearings--

17 BY MR. LUMUMBA: --Objection; excuse me.
18 Judge, at this point it is leading.

19 BY THE COURT: That is leading.

20 BY MR. EVANS: Yes, sir, and I will be glad to
21 do it-- I am just trying to make it shorter. If
22 the Court--

23 BY MR. LUMUMBA: Well--

24 BY THE COURT: I can't change the rules of
25 evidence. If he objects to it, it is leading.

26 BY MR. EVANS: All right. Yes, sir. Thank
27 you.

28 BY MR. EVANS:

29 Q. Did you describe to the officers what kind of

1 rules tell me to do.

2 BY MR. LUMUMBA: See the way-- well, that is
3 all right.

4 END BENCH CONFERENCE.

5 BY MR. LUMUMBA: I withdraw that objection as
6 to the area that Counsel says he is trying to go
7 into.

8 BY THE COURT: All right. Go ahead, Mr.
9 Evans.

10 BY MR. EVANS: Thank you.

11 BY MR. EVANS:

12 Q. Basically what you said in your original statement
13 and other statements is when you went down to cleaners, there
14 was a lot of cars there. So you passed by and didn't stop at
15 that point; is that correct?

16 A. That's correct.

17 Q. And that's the same thing you told this jury?

18 A. That's correct.

19 Q. You even described in all of your prior statements
20 what kind of clothing Carmen Rigby was wearing, didn't you?

21 A. That's correct.

22 Q. Now let me stop and I will come back to this.

23 (Pause while Mr. Evans gets an exhibit.)

24 Q. I want to hand you Exhibit D-6 and ask you to look
25 at this. I want you to point out, and we will just do it by
26 number considering the first one as the left one. Which
27 number on that is Carmen Rigby, the person that you saw that
28 morning?

29 A. The second one here.

1 Q. The second one?

2 A. This one right here.

3 (Exhibit held in front of the jury.)

4 Q. And you are describing the second person on this
5 photo spread; is that correct?

6 BY MR. EVANS: Your Honor, may I pass this to
7 the jury while I continue?

8 BY THE COURT: It has been admitted, I think,
9 so it is okay.

10 BY MR. EVANS: It might be easier for them to
11 see.

12 (Exhibit D-6 was passed to the jury.)

13 BY MR. EVANS:

14 Q. Mr. Collins, I want to direct your attention to
15 page 55, line 2, and again for the record, I'm talking about
16 the same transcript from January 6 of '99. I want you to
17 read line 2 starting with the word "and."

18 A. "And my wife called me and told me I had got the
19 wrong plugs."

20 Q. Okay. That is far enough. Is that the same thing
21 you had said earlier today or yesterday?

22 A. That's exactly what I said.

23 Q. And when she called you, were you in your car?

24 A. I was in my car.

25 Q. Now I don't want to take up the time to go through
26 all of this. Have you told the officers the same thing that
27 you have told this jury?

28 A. Everything I have told here today I have told them.

29 Q. You have been asked about your glasses. Do you

1 uses your glasses for reading or for seeing far off?

2 A. I use my glasses for reading and to see up like
3 this. Off out there I can see anything. You know, I have no
4 problem seeing arm's length away.

5 Q. Do you have any problem seeing my face from this
6 distance?

7 A. No, I do not.

8 Q. Approximately 25 or 30 feet?

9 A. No, I do not.

10 Q. Now you have been asked quite a few times about the
11 direction that you traveled. I want you to explain to the
12 jury what the main streets of traffic are in the town of
13 Winona?

14 A. The way I went-- my first purpose was to go to the
15 bank. That is the easiest way to go is up 51 or Applegate or
16 ever what you want, down Summit Street to town.

17 Q. Is Summit Street a main drag through town?

18 A. Pretty much so. I mean it is pretty much, you can
19 pretty much get to either place you want to go. But the way
20 he is talking about you have got to go down through there
21 where they have got a factory, and they have always got big
22 trucks backing in there. They have always got the road
23 blocked. You go up to 407 there, and they have always got a
24 lot of traffic. You go up to Church Street. There is cars
25 parked on both sides of the street. You have to stop and you
26 have to wait to get through there. It's a whole lot faster
27 to go the way I went than it is to go up the way he is
28 describing.

29 Q. Thank you. And in this photo lineup where you

1 identified the Defendant, I want you to look at the back of
2 his picture and see if you put your initials on that?

3 A. That is my initials.

4 Q. And did you put your initials on it at the time
5 that you looked at that and identified the Defendant?

6 A. I sure did.

7 BY MR. EVANS: Your Honor, may I pass this to
8 the jury so that they may see that?

9 BY THE COURT: That has been admitted. You
10 may do so.

11 BY MR. LUMUMBA: Judge, it has been admitted,
12 but it has not been admitted as the lineup that he
13 saw. He said he doesn't know for sure those are
14 the pictures he saw.

15 BY THE COURT: Well, it has been admitted as
16 evidence though so they can look at it. They get
17 to judge.

18 BY MR. LUMUMBA: Okay. I have no problem with
19 that.

20 (Photo lineup, Exhibit S-91, was passed to
21 the jury.)

22 BY MR. EVANS:

23 Q. The lineup that you saw is the one you put your
24 initials on; is that correct?

25 BY MR. LUMUMBA: Leading question, Judge. I
26 object--

27 BY THE WITNESS:

28 A. --is the one I just--

29 BY THE COURT: --I'm going to allow it.

1 BY THE WITNESS:

2 A. The one I just saw is the one I put my initials on.
3 The one he showed me I never seen my initials. I couldn't
4 have told you if that was the lineup or not.

5 Q. Mr. Collins, do you have any reason here in this
6 court to lie on this man over here?

7 A. I never knew that man until this come up.

8 Q. And you have been--

9 A. --I have no reason to lie on any man in this
10 courtroom.

11 Q. Yes, sir. You have been asked several times to
12 describe how the folks that you saw were traveling. Would it
13 be a fair statement that from where they were going, they
14 were going across the street--

15 BY MR. LUMUMBA: --Well, I object--

16 BY MR. EVANS: --to the side--

17 BY MR. LUMUMBA: I object to that, Judge.
18 That is leading.

19 BY THE COURT: That is leading.

20 BY MR. EVANS: Yes, sir. Let me go back
21 through these. (Pause while looking at a
22 transcript.)

23 BY MR. EVANS:

24 Q. I tell you what; let me just do this. I think this
25 will be simpler and quicker. Let's say that that wall behind
26 you is the row of buildings that Tardy Furniture is on, and
27 we will say that Tardy Furniture is from the door down to
28 that wall. This is the island out here where the cars are
29 parked. In relationship to Tardy Furniture, approximately

1 where was the car that you saw? We will say that this is
2 Tardy Furniture to here. This is Liberty, the old Liberty
3 building from here. This is the alley right here, and this
4 is Coast to Coast right here.

5 A. It was going to be parked a little bit south of
6 where the alley is there. It was headed in just a little bit
7 south of where the alley is.

8 Q. Okay, I will stand, is this approximately the right
9 area then?

10 A. Well, and then the alley was like right here.
11 (Indicating.)

12 Q. Okay, and the alley would be on this side?

13 A. Right. I think it is Keystone Alley. I went by
14 and looked. I think they call it Keystone Alley.

15 Q. And considering this, tell me which direction you
16 saw the people walking. Tell me which direction to walk from
17 here.

18 A. There was a vehicle in front of the car that they
19 were standing at.

20 Q. Okay.

21 A. Almost in front of it there.

22 Q. All right.

23 A. And I do remember a blue Camaro car being parked
24 right there.

25 Q. All right.

26 A. And I recognized that car. And they walked north
27 in front of the car that was parked there. Then they turned
28 and went across the street.

29 Q. Okay, you saw them heading across the street?

1 A. Right. I guess you call it west.

2 Q. Yes, sir. Mr. Collins, who if anyone ever tried to
3 get you to pick out a certain person out of any of these
4 lineups? Did anybody--

5 A. --didn't anybody try to get me to pick out any
6 pictures. I was shown some pictures and asked to take a look
7 at the pictures. I myself picked these pictures out. Two of
8 them I picked out because of complexion. I said these
9 complexions, which I compared them to Mr. Johnny Hargrove's
10 that morning when I told you he had a complexion of Mr.
11 Johnny Hargrove, the Chief of Police of Winona. Then I
12 picked out-- and I told them then. He had a receding hair-
13 line. I described him, and I picked him out of that lineup
14 myself. No one told me anything.

15 Q. I want to direct your attention to the statement
16 that you gave on March 10th to John Johnson, and I want you
17 to read your response to that last question?

18 A. The man I picked out of the lineup there was the
19 man I seen there in front of Tardy Furniture Company.

20 Q. Yes, sir.

21 BY MR. EVANS: Nothing further, Your Honor.

22 BY THE COURT: Okay. Is Mr. Collins finally
23 excused?

24 BY MR. EVANS: Yes, sir.

25 BY MR. LUMUMBA: Yes, sir.

26 BY THE COURT: Mr. Collins, you are free to
27 leave.

28 BY THE WITNESS: I can go home?

29 BY THE COURT: Yes, sir. You can go home.

1 BY THE WITNESS: Yes, sir.

2 WITNESS EXCUSED.

3 BY THE COURT: Who do you have next?

4 BY MR. HORAN: Barry Eskridge.

5 BY THE COURT: Have a seat up here, Mr.
6 Eskridge.

7 BARRY ESKRIDGE,

8 a white male called to testify by the State of Mississippi,
9 having first been duly sworn, testified as follows, to-wit:

10 BY THE COURT: State your name for the record.

11 BY THE WITNESS: Barry Eskridge.

12 BY THE COURT: You need to turn around and
13 face them.

14 BY THE WITNESS: Barry Eskridge.

15 BY MR. HORAN: May I proceed, Your Honor?

16 BY THE COURT: Yes.

17 DIRECT EXAMINATION BY MR. HORAN:

18 Q. Mr. Eskridge, how are you employed?

19 A. I am employed by MedStat Ambulance Service.

20 Q. And where do you live?

21 A. Winona, Mississippi.

22 Q. Okay, and is that a-- MedStat, do y'all work for
23 any hospital in the Winona area?

24 A. No, sir.

25 Q. Are y'all independent contractors?

26 A. Yes, sir.

27 Q. Okay. I want to direct your attention to the early
28 morning hours of July the 16th of 1996. Did you have an
29 occasion to be called to the Tardy Furniture Store in Winona?

1 A. Yes, sir; we did.

2 Q. And you were previously familiar with the Tardy
3 Furniture Store?

4 A. Yes, sir.

5 Q. Once you arrived at Tardy Furniture, do you
6 remember who was present?

7 A. Yes, sir. I do.

8 Q. Who was present?

9 A. Chief Johnny Hargrove, two of my employees, James
10 Owens and Bruce Story as well as the elderly gentleman that
11 worked for Tardy's. I know his first name is Sam.

12 Q. Sam Jones, Jr.?

13 A. Yes, sir.

14 Q. Were they outside Tardy Furniture?

15 A. As I arrived, Sam was standing in the doorway.
16 Chief Hargrove was inside as well as the paramedic, James
17 Owens. Bruce Story, who is the ambulance driver, was coming
18 out the door to retrieve the stretcher from the ambulance to
19 go back in, and I met him at the door.

20 Q. But you did not accompany them to the scene. You
21 were--

22 A. --I followed them; yes, sir.

23 Q. Okay. Would you tell the Court and this jury what
24 you did after that?

25 A. I entered the scene once-- I met Bruce at the
26 door. He told me what was going on, and I went, as a
27 paramedic, I went in to assist the paramedic. He, when I
28 approached the counter where the victims were, he informed me
29 of what was going on, that we had a victim that was still

1 alive which was--

2 Q. --Let me ask you something, Mr. Eskridge. During
3 the course of your training and your education as a
4 technician, do you do anything-- have you been taught to do
5 anything differently in a situation where apparently a crime
6 has been committed than in maybe just someone who has passed
7 away in a residence?

8 A. Yes, sir. We are trained in our training, and I
9 have received additional training in the course of my career
10 in preserving crime scenes. One of the things that we do try
11 to do-- of course, not to compromise the care of the patient
12 though. When we are on a crime scene, we do try to make
13 every effort that we can to preserve any evidence or make
14 sure that we don't disturb anything that would assist the
15 police in investigating the crime after we leave. So we do
16 make an effort--

17 Q. --So your primary concern is for the patient, but
18 your secondary concern is to protect the integrity of the
19 crime scene?

20 A. Yes, sir.

21 Q. Okay. In that regard what did you do?

22 A. When we approached Mr. Stewart, who was the victim
23 that I was assisting him with, as we were kneeling down to
24 attend to him, I noticed that there were a couple of unspent
25 bullets a couple of feet from him as well as a footprint that
26 appeared to be made in blood.

27 Q. Okay. Did you during the course of attending to
28 Mr. Stewart, did you make sure, did you take steps to make
29 sure that those footprints were not -- I understand you said

1 your primary concern is with the patient, but did you take
2 some steps to make sure that they were not--

3 BY MR. LUMUMBA: --Judge.

4 BY MR. HORAN: --compromised in any way?

5 BY MR. LUMUMBA: My objection is leading.

6 BY MR. HORAN: I'm not leading him, Your
7 Honor.

8 BY THE COURT: Overruled.

9 BY THE WITNESS:

10 A. Yes, sir. When the-- the paramedic was the primary
11 attendant, and I had knelt down beside him to assist him, and
12 as I did it, I noticed the footprints. The Chief of Police
13 was sitting beside me, and at that point I noticed, I
14 identified to the Chief as well as the attendants that there
15 is some unspent casings there as well as footprints, and be
16 sure not to go near them. I wasn't aware if they had seen
17 them yet, and I just made that statement. And after I made
18 it, no one went near it.

19 Q. Okay. Would you tell the Court and the jury the
20 condition of Mr. Stewart once you, once you were presented to
21 him and at the scene there?

22 A. He was lying face down. He had received a gunshot
23 wound that we immediately identified to the head. He, there
24 was a large pool of blood surrounding his upper torso and his
25 head, and he was face down in the blood. He was unconscious,
26 but he was breathing. The immediate thing that we did, of
27 course, when we began attending to him is to open his airway
28 and get his face out of the blood so he could continue to
29 breathe, but he was unresponsive basically.

1 Q. Did you put him on the stretcher at that time?

2 A. Yes, sir. We cleared his airway and, of course,
3 did a brief assessment to see if there are any other injuries
4 other than the head wound, and then we rolled him over on to
5 the stretcher, and they left the scene at that point.

6 Q. Did you know BoBo, Derrick "BoBo" Stewart prior to
7 that day?

8 A. No, sir.

9 Q. I want to show you a photograph. You may or may
10 not be able to identify this particular picture, but if you
11 can, does that appear to be Derrick Stewart?

12 A. Yes, sir.

13 BY MR. HORAN: I would like to have this
14 published to the jury at this time.

15 BY THE COURT: Has it been admitted?

16 BY MR. HORAN: It has, Your Honor.

17 BY THE COURT: Let it be passed to the jury
18 then.

19 (Exhibit S-44 was passed to the jury.)

20 BY MR. HORAN:

21 Q. Now I notice on that photograph there is some
22 stitching on the head. That was not the condition of Mr.
23 Stewart at the time that you saw him, was it?

24 A. No, sir.

25 Q. Okay. But the stitching on the photograph, is that
26 the area that you observed the gunshot wound--

27 BY MR. LUMUMBA: --Judge, the questions are
28 still very leading. I object.

29 BY THE COURT: Overruled.

1 BY THE WITNESS:

2 A. Yes, sir; it is.

3 Q. Something that appeared to be a gunshot wound?

4 A. Yes, sir.

5 Q. Would you tell the Court and the jury what was done
6 with Mr. Stewart after you left the Tardy Furniture Store?

7 A. When, when they packaged him on the stretcher, I
8 assisted them to the ambulance. I did not accompany them to
9 the hospital, and they left at that point to the hospital. I
10 stayed on the scene with the Chief of Police to check the
11 other victims for one, to make sure that there was nothing
12 that we could do but--

13 Q. Did you, in fact, do that?

14 A. Yes, sir. Yes, I did.

15 Q. And did you during the course of your, your job
16 there, did you see an individual that you may have known then
17 but you certainly know now as Bertha Tardy?

18 A. Yes, sir; I did.

19 Q. And what was her condition?

20 A. She was deceased.

21 BY MR. LUMUMBA: Can we approach for a minute,
22 Judge?

23 BY THE COURT: Uh-hum.

24 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
25 THE JURY AS FOLLOWS:)

26 BY MR. LUMUMBA: This is a side question. I'm
27 objecting to the repeated introduction of gory
28 facts about people being dead and seeing people
29 dead on the scene. None of this stuff is

1 disputed. They have been over it at least five
2 different times with different witnesses. At this
3 point it is clearly more prejudicial than
4 probative. Not only have they mentioned Bertha
5 Tardy-- I mean mentioned Stewart, where he took
6 them afterward is certainly of no relevance which
7 they have gotten past that part of my objection.
8 But now they are talking about dead bodies again.
9 These dead bodies have nothing to do at this
10 point. They have already shown where he was
11 located at this crime scene, so I am objecting to
12 the complete, the complete repetition of this gory
13 details.

14 BY MR. HORAN: It's the first time I have
15 asked.

16 BY MR. LUMUMBA: I'm not talking about with
17 this witness.

18 BY THE COURT: No, he is talking about, it's
19 cumulative is what he is saying.

20 BY MR. LUMUMBA: Yeah.

21 BY MR. HORAN: I will open it real quick and
22 move on. I'm not going to show him any photographs
23 or anything like that. I don't see why-- the
24 medical technician confirming that they are
25 deceased, why is that prejudicial?

26 BY THE COURT: Well, because it is cumulative
27 and it keeps bringing it up before the jury.

28 BY MR. HORAN: We haven't had anybody to
29 testify that they were dead.

1 **BY THE COURT:** Yeah, you have.

2 BY MR. HORAN: Not anybody that is qualified
3 to do that.

4 **BY THE COURT:** He is stipulating they are
5 dead.

6 BY MR. EVANS: Can we tell the jury that he is
7 stipulating to it because the jury is entitled to
8 know it?

9 **BY THE COURT:** That the people are dead?

10 BY MR. EVANS: Yes, sir.

11 **BY THE COURT:** Yeah, I will tell them.

12 BY MR. HORAN: That is fine.

13 BY MR. LUMUMBA: I will stipulate the people
14 were dead. I mean, you know, if you are not going
15 to call Dr. Hayne. But if you are not, I will
16 stipulate to it.

17 BY MR. HORAN: Hayne is next.

18 BY MR. LUMUMBA: Pardon?

19 BY MR. EVANS: Hayne is the next witness.

20 BY MR. LUMUMBA: They have got Hayne coming up
21 next. Why has he got to say that?

22 BY MR. HORAN: Okay, I will move on. It's
23 not--

24 **BY THE COURT:** --Let's do move on. Come on;
25 we have got a long way to go.

26 END BENCH CONFERENCE.

27 BY MR. HORAN: I withdraw the question, Your
28 Honor.

29 BY MR. HORAN:

1 Q. But you did attend to other persons on the scene?

2 A. Yes, sir.

3 Q. Mr. Stewart at some point in time after that, he
4 also passed away; is that right?

5 A. Yes, sir.

6 Q. Okay. Did you take any steps to make sure that
7 anybody in the, around the crime scene that was present when
8 you got there did not make those shoe print impressions that
9 were on the floor in the blood?

10 A. I'm not quite sure I understand.

11 Q. When you got there, did you check the shoes of
12 anybody?

13 A. My personnel, yes, sir; I did.

14 Q. Your personnel?

15 A. Yes, sir.

16 Q. And did that match anything?

17 A. No, sir.

18 Q. That was consistent with the shoe print impression
19 that you saw in the blood?

20 A. No, sir.

21 BY MR. HORAN: I tender the witness, Your
22 Honor.

23 BY MR. LUMUMBA: Just a couple.

24 CROSS-EXAMINATION BY MR. LUMUMBA:

25 Q. How many personnel did you have, Mr.-- first of
26 all, good morning, Mr. Eskridge. Morning to you. How many
27 personnel did you have there?

28 A. Two.

29 Q. Okay, and then it was yourself. Does that make

1 three?

2 A. Yes, sir.

3 Q. And so those are the only two that you checked any
4 of?

5 A. Yes.

6 BY MR. LUMUMBA: No further questions.

7 BY THE COURT: Okay, is he finally excused?

8 BY MR. HORAN: He is finally excused as far as
9 the State is concerned.

10 BY THE COURT: Mr. Eskridge, you are free to
11 go.

12 WITNESS EXCUSED.

13 BY THE COURT: Ladies and gentlemen, I'm going
14 to give y'all a break just a second. I have got to
15 get you some food ordered, and y'all have got to
16 fill out the menu. So I will take long enough to
17 do that.

18 (FOLLOWING THE SECOND MORNING RECESS ON MARCH
19 25, 1999, THERE WAS THE FOLLOWING BENCH CONFERENCE
20 IN OPEN COURT WITH ALL COUNSEL AND THE DEFENDANT
21 PRESENT BUT WITH THE JURY STILL OUT:)

22 BY MR. HORAN: As the Court knows, Mr. Balish,
23 David Balish was an independent expert that the
24 Court appointed. He did match the projectile that
25 came out of the head of one of the victims, and I
26 think it is necessary that I have Dr. Hayne testify
27 that he retrieved that even though it is not going
28 to be BoBo Stewart. It is going to be Carmen
29 Rigby, and also that Dr. Hayne retrieved a

1 projectile out of the head of Mr. Golden. I don't
2 see-- I have got to do that in order for Mr.-- and
3 I know they are going to object, but I think you
4 have already addressed that.

5 **BY THE COURT:** I assume you do object?

6 **BY MR. LUMUMBA:** Yeah. You know, our
7 objection continues on the, our argument is it's
8 more prejudicial than probative plus evidence of
9 other crimes.

10 **BY THE COURT:** Okay, I'm going to allow it,
11 but I want to restrict his testimony to the fact
12 that he did it, you know, without any, going into
13 anything else about it.

14 **BY MR. HORAN:** Right. And also, Your Honor,
15 as the Court knows because of the prior trial, that
16 the projectile was recovered from a mattress in the
17 area of Bertha Tardy, and I will have to go into
18 that to a certain extent, that it was a through and
19 through wound to her.

20 **BY THE COURT:** I realize you will have to get
21 testimony as to the trajectory of the wound, how
22 the wound goes and all like that.

23 **BY MR. HORAN:** Right.

24 **BY THE COURT:** Limit it to the fact of
25 retrieving what bullets that he retrieved and to
26 the bullet path.

27 **BY MR. HORAN:** Yes, sir. I don't intend to go
28 any further than that.

29 **BY THE COURT:** There may be some other stuff

1 that is relevant to that, but that's where--

2 BY MR. HORAN: --No autopsy photographs will
3 be shown of the other victims.

4 BY THE COURT: Right. Okay. Dr. Hayne, you
5 can take the stand.

6 BY MR. EVANS: He has not been sworn yet, Your
7 Honor.

8 BY THE COURT: Okay, I am ready. Raise your
9 right hand.

10 (Witness sworn by the Court.)

11 JURY ENTERS COURTROOM.

12 DR. STEVEN HAYNE,

13 a white male called to testify as a witness by the State of
14 Mississippi, having first been duly sworn, testified as
15 follows, to-wit:

16 BY THE COURT: State your name for the record,
17 please.

18 BY THE WITNESS: Steven Timothy Hayne, Your
19 Honor.

20 BY MR. HORAN: May I proceed, Your Honor?

21 BY THE COURT: You may.

22 DIRECT EXAMINATION BY MR. HORAN:

23 BY MR. HORAN: I tender Mr. Hayne as an expert
24 in the field of forensic pathology.

25 BY MR. LUMUMBA: Yes, Judge. Actually I don't
26 have any objection. I know Dr. Hayne, have seen
27 him a lot of times. I don't have any objection to
28 him as an expert.

29 BY THE COURT: The Court accepts him as an

1 expert in the field of forensic pathology.

2 BY MR. HORAN:

3 Q. Dr. Hayne, you are a medical doctor; is that
4 correct?

5 A. Yes, sir.

6 Q. What is your field of specialty? You have been
7 tendered and accepted as an expert in pathology.

8 A. I am a pathologist, and I work in anatomic
9 pathology, clinical pathology, as well as forensic pathology,
10 sir.

11 Q. You are here today concerning the area of forensic
12 pathology; is that right?

13 A. Yes, sir.

14 Q. Would you explain to the jury what forensic
15 pathology is?

16 A. Forensic pathology is a subspecialty of the general
17 field of pathology. It is one of the some twenty
18 subspecialties in the general field or the subspecialties of
19 pathology. And in that field there are many tasks to be
20 performed. I think generally agreed to, the two most
21 important tasks are the determination of the cause of death
22 and the manner of death of an individual.

23 The manner of death is a classification scheme used
24 in this state as well as all jurisdictions nationally and
25 internationally that I'm familiar with. And they would
26 include the choices of suicide, accident, homicide, natural,
27 pending, and in some cases and rarely undetermined when one
28 cannot come to a final conclusion. The cause of death of an
29 individual is the medical reason that person died, whether it

1 expert in the field of forensic pathology.

2 BY MR. HORAN:

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4 correct?

5 A. Yes, sir.

6 Q. What is your field of specialty? You have been
7 tendered and accepted as an expert in pathology.

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9 pathology, clinical pathology, as well as forensic pathology,
10 sir.

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12 pathology; is that right?

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17 field of pathology. It is one of the some twenty
18 subspecialties in the general field or the subspecialties of
19 pathology. And in that field there are many tasks to be
20 performed. I think generally agreed to, the two most
21 important tasks are the determination of the cause of death
22 and the manner of death of an individual.

23 The manner of death is a classification scheme used
24 in this state as well as all jurisdictions nationally and
25 internationally that I'm familiar with. And they would
26 include the choices of suicide, accident, homicide, natural,
27 pending, and in some cases and rarely undetermined when one
28 cannot come to a final conclusion. The cause of death of an
29 individual is the medical reason that person died, whether it

1 be from a stab wound or cancer or heart attack or literally
2 thousands, if not tens of thousands of possibilities. It
3 usually requires an autopsy or postmortem examination in
4 which the basic questions of cause and manner of death are
5 addressed as well as other questions that have to be
6 addressed.

7 Furthermore, there are other areas within forensic
8 pathology that one is also working, but the two primary tasks
9 of a forensic pathologist is the determination of the cause
10 of death and the manner of death of an individual that has
11 come under, at least the death of that individual under legal
12 statute. And in this state it is the Coroners Reorganization
13 Act of 1986 which gives the power to the county coroner
14 medical examiner investigator to investigate deaths of
15 public concern including violent deaths, and the county
16 coroner medical examiner investigator may then contact the
17 forensic pathologist and request a postmortem examination or
18 autopsy to address the cause of death, manner of death, as
19 well as the myriad of other questions that have to be
20 addressed.

21 Q. Okay, you mentioned the term "autopsy." What is an
22 autopsy?

23 A. There are essentially two types of autopsies.
24 There is a medical autopsy performed usually at the request
25 of the legal next of kin to determine the medical reason that
26 person died, the cause of death. Then there is a medical
27 legal autopsy or forensic autopsy which addresses cause and
28 manner of death as well as collection of evidence,
29 documentation of injury, if present, as well as other factors

1 that are not necessarily associated with a regular or
2 hospital type autopsy.

3 Q. Okay, I want to direct your attention to the month
4 of July of 1996. Did you have an occasion to do an autopsy
5 on an individual by the name of Derrick "BoBo" Stewart?

6 A. Yes, sir. Identified to me as Derrick Stewart by
7 the county coroner medical examiner investigator of
8 Montgomery County.

9 Q. And once Mr. Stewart's body was presented to you,
10 did it appear that he had received some medical intervention
11 prior to the time that you saw him?

12 A. Yes, sir.

13 Q. Would you explain that to the jury?

14 A. The medical intervention had occurred after the
15 infliction of injury, specifically a gunshot wound to the
16 back of the head, and that the injury sites, the entrance
17 wound to the back of the head as well as the exit gunshot
18 wound located near the right eyebrow had been sutured, had
19 been sewn together by medical personnel. There was also a
20 series of small puncture sites located on the extremities,
21 the right and left arms for the placement of intravenous
22 catheters and the administration of fluids and medications.

23 Q. I want to hand you a photograph that has been
24 introduced in evidence as State's Exhibit number 44. Did you
25 take that photograph or?

26 A. I did, sir.

27 Q. Okay, and is that Derrick Stewart?

28 A. It is, sir.

29 Q. And I assume pursuant to the Reorganization Act of

1 1986, it was a request of you to do that autopsy; is that
2 right?

3 A. Yes, sir.

4 Q. And what steps did you take in that endeavor?

5 A. Well, there were several steps that I took during
6 the course of the autopsy as well as even after the autopsy.
7 Most importantly, I discussed the case with the coroner, Mr.
8 Oliver. And Mr. Oliver also attended the autopsy.

9 Q. That is Carl Oliver?

10 A. Carl Oliver, who is the county coroner medical
11 examiner investigator of Montgomery County and who is the
12 elected coroner and had jurisdiction over the remains and had
13 requested autopsy. That was followed then by a series of
14 steps including an external and internal examination.

15 Q. Okay. And would you tell the jury as a result of
16 your external and internal examination what you found?

17 A. The significant findings precipitating death
18 included the presence of a gunshot wound located to the back
19 of the head at the site of the entrance gunshot wound at a
20 point 3 inches below the top of the head, one inch to the
21 left of the midline. On the facial side of the head, there
22 was a sutured exit gunshot wound located in the area of the
23 right eyebrow, located at a point 5 inches below the top of
24 the head and approximately 1 1/2 inches to the right of the
25 midline of the face. On the--

26 Q. --Are you-- I'm sorry.

27 A. On the internal examination, there was significant
28 injuries to the brain. There were, there was a perforating
29 gunshot wound to the brain. There was also hemorrhage--

1 BY MR. FREELON: --Can we object? Can we
2 approach?

3 BY THE COURT: Yeah.

4 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
5 THE JURY AS FOLLOWS:)

6 BY MR. FREELON: Is this not what we asked
7 that we not go into?

8 BY THE COURT: No, Hayne can go into it. The
9 other, I wouldn't let the other witness go into it,
10 but he is entitled to put the pathologist on to go
11 into this.

12 END BENCH CONFERENCE

13 BY MR. HORAN:

14 Q. You may continue, Dr. Hayne, if you can recall
15 where you were.

16 A. There was hemorrhage or bleeding around the surface
17 of the brain, approximately one third of a cup of blood. And
18 there was also a wound tract through the brain measuring
19 approximately the diameter of a nickel with extensive
20 injuries to the brain about that wound tract. Furthermore,
21 there was bleeding over the surface of the brain to include
22 the cerebral hemispheres and the cerebella hemispheres, the
23 four large structures of the brain. There was significant
24 brain swelling also to the brain itself with collection of
25 fluid into the brain, and then there were changes, what are
26 called respirative brain or hypoxicencephalopathy, changes
27 that occur after the brain has died. The neurons, the nerve
28 cells start degenerating. You could see an unusual swelling
29 pattern to the brain. It was also obvious on the dissection

1 of the brain itself. There were also extensive fractures to
2 the skull essentially in line with the wound tract itself
3 coursing through the brain.

4 Q. Okay, you described a gunshot wound to the head.
5 Did you note any other injuries to the body?

6 A. No, sir.

7 BY MR. HORAN: I would like to have the
8 witness step down if I could.

9 BY THE COURT: All right. You may do so.

10 BY MR. HORAN:

11 Q. Dr. Hayne, would you describe on my head where you
12 noticed the entrance, what you have described as the entrance
13 wound, and tell the jury how you came to the conclusion that
14 that was, in fact, an entrance gunshot wound?

15 A. Can you turn to the side.

16 Q. Okay.

17 A. The entrance gunshot wound was located
18 approximately here. (NOTE: Witness is standing in front of
19 the jury box pointing on Mr. Horan's head.) It measured,
20 after the sutures were removed, approximately one half inch
21 in diameter. And the determination that it was an entrance
22 gunshot wound was not made by looking at the skin surface but
23 by looking at the bone tissue. And the bone tissue was
24 internally beveled, that the entrance wound on the outside of
25 the skull was smaller than the entrance gunshot wound on the
26 inner surface of the skull, which is very similar to when a
27 rock hits a windshield. It produces a similar type of injury
28 pattern that the smaller hole is on the outside, and the
29 larger hole is on the inside. That would give proof positive

1 that the entrance gunshot wound was the gunshot wound to the
2 back of the head and was not the gunshot wound that was found
3 over the right eyebrow.

4 Q. Right over the right eyebrow that is in the
5 photograph?

6 A. Yes, sir.

7 Q. Okay. You can return back to your seat. Thank
8 you?

9 A. (Witness returns to witness stand.)

10 Q. Were you able to make a determination as to whether
11 or not this was a close contact or distant wound?

12 A. The only determination I could conclude was it was
13 a non-contact gunshot wound. It could be either a near
14 contact or a distant gunshot wound, and the reason I could
15 only go that far is that there had been medical
16 intervention. The hair had been shaved and the superficial
17 outer layer of the skin had also been disrupted, and the
18 wound itself had been sutured. But I could conclude that the
19 muzzle of the weapon was not placed directly against the skin
20 surface when the weapon was fired.

21 Q. Medical intervention prohibited you is what you are
22 saying from making any determination as to whether or not,
23 other than the fact that it was not a contact wound?

24 A. That is correct, sir.

25 Q. Dr. Hayne, did you come to a conclusion based on
26 your experience, your training and your expertise and your
27 experience as to what the cause and manner of death of
28 Derrick "BoBo" Stewart was?

29 A. Yes, sir.

1 Q. What was that conclusion?

2 A. Stewart died from a gunshot wound to the back of
3 the head, either near contact or distant and perforating,
4 that the bullet entered and left the head of Mr. Stewart.
5 And the manner of death I ruled as homicide, sir.

6 Q. And the wound that you saw to Mr., that you
7 observed in Mr. Stewart's head, would that be consistent with
8 a small caliber weapon, a .380, .32, something in that line?

9 A. It would be consistent with, which I would consider
10 a .380 a large caliber weapon--

11 Q. --well, larger than, I'm sorry; large caliber, I
12 mean.

13 A. A .32 would be an intermediate caliber.

14 Q. Would it be consistent with a .380 caliber?

15 A. Yes, sir.

16 Q. Did you have an occasion to actually go to Tardy
17 Furniture Store on July the 16th, 1996?

18 A. Yes, sir.

19 Q. If you would--

20 BY THE COURT: --Just a minute, Mr. Horan.
21 Could I do one thing. Mr. Moleta.

22 BY JUROR MR. JOSEPH MOLETA: Yes, sir.

23 BY THE COURT: Could you make another
24 selection? They are out of meat balls.

25 BY MR. MOLETA: You are kidding; right?

26 (Laughter.)

27 BY THE COURT: I'm not picking on you. I just
28 wanted to get you something to eat.

29 BY MR. MOLETA: This is embarrassing.

1 (Laughter.)

2 **BY THE COURT:** Well, it's not your fault.
3 They are the ones that are out.

4 (Bailiff hands paper to the juror, Mr. Moleta,
5 and he makes another selection.)

6 **BY THE COURT:** Thank you, sir. I apologize
7 for singling you out. All right, Mr. Horan.

8 **BY MR. HORAN:** Thank you, Your Honor.

9 **BY MR. HORAN:**

10 Q. Dr. Hayne, you said you went to the scene of Tardy
11 Furniture Store?

12 A. Yes, sir.

13 Q. Did you observe the bodies of an individual by the
14 name of Bertha Tardy there at the store?

15 A. Not the body. I arrived after the decedents had
16 been removed. In fact, it was several days later, I believe.

17 Q. You went to-- I'm sorry. You went to the area
18 where her body was recovered?

19 A. That's correct.

20 Q. Now you did, in fact, do an autopsy on the body of
21 Bertha Tardy, did you not?

22 A. I did, sir.

23 Q. Did you do a diagram or any notes? As part of your
24 report, do you do a diagram of what your findings are?

25 A. I did, sir.

26 Q. Do you have that with you today?

27 A. I do, sir.

28 Q. Do you also have the diagram in your autopsies of
29 Carmen Rigby and Robert Golden with you?

1 A. I have the autopsy reports as well as the diagram
2 on Robert Golden and also the diagram on Carmen Rigby, sir.

3 Q. Okay, would you take those diagrams out of the
4 reports you have there, please, sir?

5 A. Separate them, sir?

6 Q. Yes, sir. Please.

7 Q. While you are doing that, I will ask you a couple
8 of questions. Are those fair and accurate copies of the
9 diagrams that you did on the original autopsy report?

10 A. Yes, sir.

11 BY MR. HORAN: Your Honor, I would move for
12 the introduction. I will have them marked. I
13 would like to have the diagrams introduced into
14 evidence at this time.

15 **BY THE COURT:** Any objection?

16 BY MR. LUMUMBA: May I see them, please.

17 (Defense Counsel looks at diagrams.)

18 BY MR. LUMUMBA: None other than the ones
19 before trial.

20 **BY THE COURT:** Let them be marked and
21 admitted.

22 BY MR. HORAN: Your Honor, for the record each
23 one of these exhibits would contain more than one
24 page, and each one contains four pages.

25 **BY THE COURT:** We will make them cumulative.
26 You don't want each individual page an individual
27 exhibit, do you?

28 BY MR. HORAN: No. Just for the record, I
29 wanted to make sure we have all the pages.

1 (DIAGRAMS FROM AUTOPSY REPORTS ON ROBERT
2 GOLDEN, BERTHA TARDY, AND CARMEN RIGBY WERE MARKED
3 AND RECEIVED IN EVIDENCE AS STATE'S EXHIBITS S-100,
4 S-101, AND S-102 RESPECTIVELY.)

5 BY MR. HORAN:

6 Q. Dr. Hayne, I hand you what has been introduced in
7 evidence as State's Exhibit 101. Is that the diagram you
8 just previously testified about in reference to the autopsy
9 of Bertha Tardy?

10 A. Yes, sir.

11 Q. And I will try to shorten it some. Did you observe
12 any gunshot wound to her head?

13 A. I did, sir.

14 Q. Would you tell the jury about this particular
15 gunshot wound?

16 A. It was a gunshot wound to the right side of the
17 head, coursing across the head, exiting near the left eye,
18 going through and through the head producing extensive
19 injuries to the brain leading to death as well as fractures
20 or breaking of the bone at the base of the skull, that part
21 of the skull on which the brain sits.

22 Q. Okay, it may be easier just to do it with your
23 head. Would you describe on your head for the jury where
24 this gunshot wound was?

25 A. Yes, sir. The entrance gunshot wound was located
26 slightly above the right ear and exited near the left eye,
27 sir.

28 Q. Okay, and again, was it, were you able to make a
29 determination as to whether or not it was a contact wound or

1 distant or close?

2 A. This was a distant gunshot wound, sir, in that the
3 muzzle of the weapon was no closer than approximately a foot
4 and a half to two feet when the gun was fired.

5 Q. And again, would that be consistent with the wound
6 that you found? Would that be consistent with a .380 caliber
7 pistol?

8 A. It would be consistent with that.

9 Q. Also, State's Exhibit 100 is the autopsy of Robert
10 Golden. Is that the diagram that you testified about
11 earlier?

12 A. Yes, it is the diagram that I identified; yes, sir.

13 Q. That you identified earlier?

14 A. Yes, sir.

15 Q. Would you describe the gunshot wound that you found
16 on the body of Mr. Golden?

17 A. There was a through and through gunshot wound
18 entering near the left ear and on the left side of the head,
19 exiting on the right side of the head slightly behind the
20 right ear. There was one unusual characteristic about this
21 gunshot wound in that there was tatooing, deposits of
22 unburned powder on the skin surface about the entrance
23 gunshot wound which would make this a near contact gunshot
24 wound in that the muzzle of the weapon was approximately a
25 foot to maybe even 15 inches away from Mr. Golden's head when
26 the handgun was fired.

27 Q. Did you notice any other wounds about him, about
28 his body?

29 A. May I look at my notes, sir?

1 Q. Sure.

2 A. Yes, sir.

3 Q. Where was that gunshot wound located, Dr. Hayne?

4 A. The gunshot wound on Mr. Golden, sir?

5 Q. Right. Yes, sir.

6 A. It was, it entered on the front part of the left
7 ear, exited behind and slightly above the right ear, sir.

8 Q. Describe the second wound that you--

9 A. There were multiple other wounds on the body
10 including abrasions or scrapings of the skin located on the
11 left side of the face. There was also a large bruise located
12 on the front of the right arm near the right shoulder, and
13 located within that bruise was an area of skin scraping
14 measuring approximately an inch and a half. There was also a
15 bruise on the inner surface of the right arm that measured
16 approximately one inch, and there was also a bruise located
17 near the elbow that measured approximately an inch and a
18 half.

19 Q. Now the wound that you described on Mr. Golden's
20 head, the gunshot wound. Was it consistent also with a .380
21 caliber pistol?

22 A. Yes, sir.

23 Q. And finally, I show you State's Exhibit 102. Is
24 that the diagram of the autopsy of, that you performed on
25 Carmen Rigby?

26 A. These are the diagrams of that autopsy; yes, sir.

27 Q. Okay, would you describe the gunshot wound, if any,
28 that you found on the body of Carmen Rigby, please, sir?

29 A. The entrance gunshot wound was located over the

1 back of the head, slightly to the right of the midline at a
2 point 3 inches below the top of the head and approximately 1
3 inch to the right of the midline of the back of the head.

4 Q. Okay, was it distant?

5 A. It was a distant gunshot wound, sir.

6 Q. And it was lethal?

7 A. It produced death; yes, sir.

8 Q. I hand you State's Exhibit number 88 and 87 for
9 identification purposes, and tell me whether or not you have
10 ever seen those items before?

11 A. (Pause while witness examines.) Yes, sir.

12 Q. Okay, what are those items? If you could explain
13 to the jury what they are, please, sir?

14 A. These are on Mr.-- well, the first item, State's 87
15 shows fragments of the bullet recovered from Mr. Golden.
16 State's 88 shows fragments of the bullet recovered from
17 Carmen Rigby.

18 Q. Where did you recover the projectile in 88 from
19 Carmen Rigby? Was that actually out of her skull, out of her
20 head?

21 A. That's correct, sir.

22 Q. And also from Mr. Golden, was it recovered?

23 A. Parts of the bullet, yes, sir.

24 Q. Okay, the condition of the one recovered from Mr.
25 Golden's head, do you recall whether or not what type of
26 condition it was in?

27 A. Markedly deformed.

28 Q. And what about the one out of Ms. Rigby's head?

29 A. Markedly deformed fragments.

1 Q. The gunshot wound that you described in reference
2 to Mr. Stewart, can you tell this jury whether or not if he
3 received this wound, would he be mobile? Would he be
4 ambulatory? Could he move after he received this particular
5 wound?

6 A. No, sir. I do not believe that he would have any
7 voluntary movement after receiving such a gunshot wound.

8 Q. What about the wounds with reference to Ms. Rigby,
9 Ms. Tardy, and Mr. Golden?

10 A. I would not expect any significant movement
11 though-- (Pause while looks at notes). No, I would not
12 expect any movement.

13 BY MR. HORAN: I move for introduction of 87
14 and 88.

15 BY MR. LUMUMBA: We don't have anything other
16 than what we raised already, Judge.

17 BY THE COURT: All right, sir. That objection
18 is overruled. Let them be marked as exhibits.

19 (EVIDENCE BAGS CONTAINING PROJECTILES IN TUBES
20 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-87 AND S-88
21 FOR IDENTIFICATION WERE NOW BOTH RECEIVED IN
22 EVIDENCE.)

23 BY MR. HORAN:

24 Q. Dr. Hayne, for the jury's benefit, these two tubes
25 are materially in the same condition today as they were when
26 you placed them into the evidence bag; is that correct?

27 A. Yes, sir. To my knowledge they are in the same
28 condition.

29 BY MR. HORAN: Thank you. I tender the

1 witness, Your Honor.

2 BY MR. LUMUMBA: Thank you.

3 CROSS-EXAMINATION BY MR. HORAN:

4 Q. Good morning, Dr. Hayne.

5 BY MR. HORAN: One other thing if it is all
6 right. I need to introduce the diagram of Mr.
7 Stewart's autopsy.

8 BY THE COURT: Okay.

9 (DIAGRAM FROM DERRICK STEWART'S AUTOPSY WAS
10 MARKED AND RECEIVED IN EVIDENCE AS STATE'S EXHIBIT
11 S-103.)

12 BY MR. LUMUMBA:

13 Q. Good morning barely, Dr. Hayne.

14 A. Good morning, Counsel.

15 Q. Dr. Hayne, I just have a few questions actually.
16 One is when you do these autopsies, do you preserve clothing
17 and valuables which the person might have on them so that
18 they can be sent for any further examination by the Crime
19 Lab?

20 A. Of course, it depends upon the case. If there is
21 clothing and we suspect or have any reason to believe that
22 clothing could be used for analysis, then we routinely submit
23 that clothing to the Mississippi State Crime Lab.

24 Q. Would that also be true with valuables and things
25 of that nature that a person might have on them, you know,
26 like watches, jewelry, whatever?

27 A. No, sir. The State Crime Lab will not accept
28 those.

29 Q. They won't accept them. Okay. Well, as to Bertha

1 Tardy, did she have clothing that was taken from her?

2 A. Bertha Tardy?

3 Q. Uh-hum?

4 A. (Pause while witness looks at records.)

5 Q. Or wait, you know; I'm sorry. Do you have, does he
6 have all of those? Do you have all the autopsies up there?

7 A. Yes, sir. The autopsy reports, I do, sir.

8 Q. Okay, good. I am looking on the first page of your
9 report, postmortem exam.

10 A. Yes, sir.

11 Q. And there was clothing that was taken off her body?

12 A. Yes, sir. There were two shoes, panties, slip,
13 pantyhose, bra, skirt, and shirt as well as jewelry.

14 Q. Okay, and jewelry. Do you know whether any of this
15 was forwarded to the Crime Lab for further examination?

16 A. To my knowledge, it was. It so indicates on
17 heading number 8, trace evidence, that the clothing was
18 submitted to the Mississippi State Crime Lab under chain of
19 custody.

20 Q. Okay. I don't know if you are a trace evidence
21 expert, but I mean is it your understanding the reason why
22 you send those things there because they may, they may be
23 able to make examinations of the blood and the DNA test and
24 all that kind of stuff in order to compare with other
25 people?

26 A. Yes, sir.

27 Q. Okay, and to see if any of their blood might have
28 wound up on any potential person; is that correct?

29 A. That's correct, sir.

1 Q. Now as far as Derrick Stewart is concerned,
2 actually he had been to the hospital; is that correct?

3 A. That's correct, sir.

4 Q. And he had been injured and sent to the hospital.
5 So you really don't have anything here for him except a
6 hospital gown?

7 A. Yeah, the only clothing he had on was a hospital
8 gown. We did not turn that in since we felt it would be of
9 no value.

10 Q. Okay, as far as Robert Golden is concerned, would
11 it be safe to say there was, there was on him clothing, you
12 know, several items of clothing?

13 A. Yes, there were. There was a green shirt, a red
14 hat, two brown shoes, two white socks, blue pants, brown
15 belt, white briefs as well as jewelry, a wallet, and money,
16 sir.

17 Q. Okay, jewelry, a gold colored watch and wallet with
18 some money?

19 A. Yes, sir.

20 Q. Were any of those items turned in to be examined?

21 A. The clothing, sir. In fact, all of the clothing
22 was submitted to the State Crime Lab under chain of custody.
23 The other items were returned to the funeral home for the
24 family, sir.

25 Q. And the final person was Ms. Rigby?

26 A. Yes, sir.

27 Q. Were there items of clothing and any other things
28 taken from her?

29 A. Yes, sir. It included red pants, red shirt, two

1 sandals, bra, panties, and a panty girdle. The jewelry to
2 include 3 rings, two earrings and a watch were not removed
3 and were returned on the decedent upon completion of the
4 autopsy. The clothing as indicated in section number 8,
5 trace evidence, was transferred to the Mississippi State
6 Crime Lab under chain of custody.

7 BY MR. LUMUMBA: Thank you. I have no further
8 questions.

9 BY MR. HORAN: Nothing further and request
10 that Dr. Hayne be finally excused.

11 BY THE COURT: All right, Dr. Hayne, you are
12 free to leave.

13 BY THE WITNESS: Thank you, sir.

14 WITNESS EXCUSED.

15 BY THE COURT: Let me see y'all just a second.

16 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
17 THE JURY AS FOLLOWS:)

18 BY THE COURT: You don't need to take this,
19 but you can if you want to. I don't care. Who is
20 your next witness?

21 BY MR. HORAN: I don't know. We were just
22 discussing it. It's going to be a long one, I am
23 sure.

24 BY THE COURT: Is it? He said that their meal
25 will be here from 12:15 to, between 12:15 and
26 12:30. So there is no point in us starting a long
27 witness now, do y'all think?

28 BY MR. LUMUMBA: No.

29 BY THE COURT: What about we recess and then I

1 will give y'all-- we will just take an hour and 15
2 minutes, be back about 1:15. Is that okay?

3 BY MR. EVANS: Yes, sir.

4 BY MR. LUMUMBA: Make it 1:30 and I will
5 actually eat.

6 BY THE COURT: I will bring you something.
7 (Laughter.)

8 END BENCH CONFERENCE.

9 BY THE COURT: They tell me y'all's food will
10 be here in about 15 minutes. Then they also tell
11 me that the next witness will be long, so we are
12 going to take the lunch break now. And they will
13 get you some food here just shortly, and we are
14 going to break until 1:15. We will start back with
15 some testimony at that time.

16 (FOLLOWING THE NOON RECESS ON MARCH 25, 1999,
17 THE TRIAL RESUMED IN OPEN COURT WITH THE COURT, ALL
18 COUNSEL, AND THE DEFENDANT PRESENT:)

19 (CONFERENCE AT THE BENCH WITH THE JURY OUT AS
20 FOLLOWS:)

21 BY THE COURT: I told this to Mr. Freelon
22 before I went to lunch, but now I have got a little
23 further information. The bailiffs have indicated
24 to me that some, that the defense witnesses have
25 been coming in the courtroom from their witness
26 room. Then I have also found out or have, I have
27 information that some of the folks who are
28 spectators are going out of the courtroom and into
29 the defense witness room. Now I can't, I can't

1 have that, and I need for y'all to explain that to
2 your witnesses and to the spectators so I don't get
3 into that problem when something comes up.

4 BY MR. LUMUMBA: Okay. Now you said there is
5 witnesses coming into the--

6 BY THE COURT: They said it was working both
7 ways. This is the only information I have, so what
8 I'm trying to do is get y'all to address it.
9 Whether it happened or not--

10 BY MR. FREELON: --Yes, sir. We addressed it
11 when you told us. We were meeting outside.

12 BY THE COURT: All right, did you talk to the
13 spectators about not going in there and talking to
14 the--

15 BY MR. LUMUMBA: --Right.

16 BY MR. FREELON: Everybody was standing
17 outside. We made it clear that they cannot go into
18 the witness room.

19 BY THE COURT: Okay, and the witnesses in the
20 witness room can't come in here.

21 BY MR. FREELON: Can't come in here; correct.

22 BY THE COURT: All right.

23 BY MR. EVANS: Your Honor, and I'm not, I'm
24 going to try to say this in a way, I'm not trying
25 to accuse anybody of anything, but just for the
26 record, there have been some defense folks that we
27 thought might be witnesses. They may not be. I
28 just wanted to make it clear that no witnesses can
29 be in the courtroom or they can't testify.

BY THE COURT: Well, and that's the reason I am bringing all this up is I do not think we are to the point where we have got that as a problem, but I don't want it to be one. That's all I am trying to keep it from being a problem.

BY MR. LUMUMBA: Can I ask one question while we are up here? Who do we have coming up next? I have a motion in limine depending upon who it is.

BY MR. EVANS: Probably Katherine Snow.

BY MR. LUMUMBA: Katherine Snow? Okay, that is not the person I have got the motion on.

BY THE COURT: Okay.

BY MR. EVANS: If it is something we can tend to now or--

BY MR. LUMUMBA: --Well, we may be able to. Yeah, we can raise it now. If Patricia Hollman testifies, then I would move to exclude from her testimony any mention of alleged argument taking place between her and, between Curtis and his wife, the reason being is that when I looked at the transcript last time and then I talked to her too, she has no way of relating that argument to anything that had anything to do with Tardy's. And the argument didn't occur--

BY THE COURT: --Well, why don't I do a 403 hearing at that time? And if you will raise that objection, I will do it outside the presence of the jury.

END BENCH CONFERENCE.

1 **BY THE COURT:** Y'all ready to proceed?

2 BY MR. EVANS: Yes, sir.

3 **BY THE COURT:** We need Katherine Snow.

4 JURY COMES IN THE COURTROOM.

5 **KATHERINE SNOW,**

6 a black female called to testify as a witness by the State of
7 Mississippi, having first been duly sworn, testified as
8 follows, to-wit:

9 **BY THE COURT:** State your name for the record,
10 please.

11 BY THE WITNESS: Katherine Snow.

12 BY MR. EVANS: May I proceed, Your Honor?

13 **BY THE COURT:** Uh-hum.

14 DIRECT EXAMINATION BY MR. EVANS:

15 Q. Ms. Snow, where do you live?

16 A. Out there in Vaiden, Mississippi.

17 Q. And where are you employed?

18 A. Angelica.

19 Q. Do you remember the day of the murders at Tardy
20 Furniture there in Winona?

21 A. I do.

22 Q. Where were you working at that time?

23 A. Angelica.

24 Q. What hours were you working?

25 A. 7:00 to 3:30.

26 Q. And that is 7:00 AM to 3:30 PM?

27 A. Uh-huh.

28 Q. On that particular day of the murders, July 16th,
29 what time did you go to work that morning?

1 A. 7 o'clock.

2 Q. Okay. Do you know a person by the name of Doyle
3 Simpson?

4 A. Yes, I do.

5 Q. Do you know the type of car that he drives or was
6 driving at that time?

7 A. Yeah, I do.

8 Q. Did you have an occasion to see Doyle Simpson or
9 his car that morning?

10 A. Yes, I did.

11 Q. Explain to the ladies and gentlemen when you saw
12 it?

13 A. When I saw it?

14 Q. Right.

15 A. That morning when I walked out the door. I walked
16 out the door between 7:15 and 7:30. I asked my supervisor
17 could I go out and move my car because it was parked halfway
18 out in the highway where the main traffic come down through
19 at Angelica's because the trucks, they come through there and
20 my car back end was in the way. I was running late that
21 morning, so I had to park there in order to get in the plant
22 in time to clock in at 7:00. So I asked if I could go out
23 and move it. I went out the door. I seen Curtis Flowers
24 laying on the front end of Doyle Simpson's car. And I spoke;
25 he spoke. I went up and moved my car. I come back down and
26 went in the plant.

27 Q. So you had left your car parked in a bad place, and
28 about 7:15 to 7:30 you went out to move it?

29 A. Yes, I did.

1 Q. You say you saw Curtis Flowers leaning up against
2 Doyle Simpson's car?

3 A. Yes, I did.

4 Q. Now do you see the person that you know as Curtis
5 Flowers in the courtroom?

6 A. Yes, I do.

7 Q. Would you point to him and identify him, please?

8 A. (Witness points.)

9 BY MR. EVANS: May the record reflect that she
10 has identified the Defendant in this case?

11 BY THE COURT: Let the record reflect that.

12 BY MR. EVANS:

13 Q. Had you known Curtis Flowers before that day?

14 A. Yes, I had.

15 Q. Okay, now that particular day, how close were you
16 to Curtis Flowers?

17 A. Well, from where the car parked right in the first
18 parking spot on the front row, right there and until enough
19 for me to just walk out of the plant, go up the main, that
20 main street where they travel. So it was pretty close.

21 Q. Close enough to talk to him and have a
22 conversation?

23 A. Yeah, I could have. I just spoke.

24 Q. You spoke to him. Did he speak back to you?

25 A. Yes, he did.

26 Q. Any doubt in your mind that this is the person you
27 saw leaning against Doyle Simpson's car?

28 A. No doubt.

29 Q. Describe to us how he was leaning up against

1 Doyle's car?

2 A. He was leaning up like this, just laying up against
3 there.

4 Q. Which side of the car?

5 A. On the driver's side, front end.

6 Q. He was just leaning up on--

7 A. --Just leaning up against it.

8 Q. When was the first time that you told anybody about
9 him leaning up against the car?

10 A. The first time I told anybody? When they were
11 searching Doyle Simpson's car.

12 Q. And who did you tell first?

13 A. When I first seen it, it was Frances Meeks. She
14 was standing down there at Dot McChristian, and I said, "Uh.
15 I seen a guy laying up against Doyle Simpson's car this
16 morning."

17 Q. Okay, at that point did you know the person's name?

18 A. I couldn't place his name with the face, and I kept
19 on, and before that day was over, I had placed the name with
20 the face.

21 Q. Before the day was over, you had remembered what
22 his name was?

23 A. Uh-hum.

24 Q. Did the police show you a lineup?

25 A. Yes, they did.

26 Q. Did you pick Curtis out of that lineup?

27 A. Yes, I did.

28 Q. Did you pick him out of the lineup because anybody
29 suggested that you pick him out--

1 BY MR. LUMUMBA: --Judge, the questions are
2 leading. I don't have-- they are leading.

3 BY THE COURT: You need to rephrase.

4 BY MR. EVANS: I haven't finished the question
5 yet.

6 BY THE COURT: No, but even if you hadn't, it
7 began as a leading question. You will have to
8 rephrase it. You can probably ask it, but you
9 can't ask it in that form.

10 BY MR. EVANS: Well, can I state for the Court
11 what I was going to ask so that-- what I was going
12 to ask is did you pick him out of the lineup
13 because anyone suggested or because of your
14 personal knowledge of him.

15 BY THE COURT: Okay. I will allow that. Go
16 ahead.

17 BY THE WITNESS:

18 A. My personal knowledge of it.

19 BY MR. EVANS: Okay. Tender the witness--
20 wait one second, Your Honor.

21 (Pause while State's Counsel confer.)

22 BY MR. LUMUMBA: May we proceed, Judge?

23 BY THE COURT: Uh-hum.

24 CROSS-EXAMINATION BY MR. LUMUMBA:

25 Q. Good afternoon, Ms. Snow.

26 A. Good afternoon.

27 Q. Ms. Snow, you, as you have indicated, you worked
28 on, at the Angelica plant; is that correct?

29 A. That's correct.

1 Q. And working at the Angelica plant, you knew Mr.
2 Simpson; is that also correct?

3 A. Yes.

4 Q. Had known him for quite some time; is that right?

5 A. That's true.

6 Q. Now you go in to work say about 7 o'clock, do you
7 not?

8 A. That's right.

9 Q. Okay, and you came out of work shortly after you
10 got in. I think that's what you have told us in previous
11 reports?

12 A. That's true.

13 Q. And when you come out of work-- well, first of all,
14 let me ask you this. This person who you say is leaning up
15 against the car of Doyle Simpson. Was he doing anything?

16 A. No, he wasn't.

17 Q. Did he have any gun in his hand?

18 A. No, he didn't.

19 Q. Did you see him go in the car?

20 A. No, I didn't.

21 Q. Did you see him take anything out of the car?

22 A. No, I didn't.

23 Q. You see him do anything improper?

24 A. No, I didn't.

25 Q. Anything illegal?

26 A. No, I didn't.

27 Q. So you had no reason to be paying particular
28 attention to him either really?

29 A. No, I didn't.

1 Q. All right. So, but in any event, so you really
2 only saw him for a brief period of time?

3 A. True.

4 Q. Quickly saw him and then went back in; is that
5 right?

6 A. Well, I know him.

7 Q. Okay. Well, I'm going to get to that in a minute.
8 I am certainly going to get to that in a minute. But you
9 only saw him briefly and went back inside; right?

10 A. True.

11 Q. In fact, I think that you have said at some point
12 is that actually you saw him when you came out, but when you
13 went in, you didn't see him again?

14 A. That's true.

15 Q. Okay, and actually you didn't stay out there a long
16 time, did you?

17 A. No, I didn't.

18 Q. Okay, you just came out, went straight to your car,
19 moved your car, and went back in; right?

20 A. Right.

21 Q. And the person you only saw for such a brief time
22 that when you passed him, you saw him, but when you went
23 back, he wasn't there; right?

24 A. True.

25 Q. Okay. Now let me ask you this here. You didn't go
26 back in the plant and tell Curtis-- you didn't go back in the
27 plant and tell Doyle that that was Curtis Flowers, did you?

28 A. No, I didn't.

29 Q. You didn't tell Doyle anything?

1 A. No, I didn't.

2 Q. You had no reason to be concerned?

3 A. No, I didn't.

4 Q. The person didn't seem to be anybody who was posing
5 a threat to anybody; right?

6 A. No.

7 Q. As far as you know, he wasn't?

8 A. True.

9 Q. You have no reason to believe that that person did
10 anything; is that right?

11 A. Right.

12 Q. But anyway, whoever the person was, you at some
13 point talked to the police; is that right?

14 A. True.

15 Q. Now you said that by the end of the day you had
16 remembered-- now the truth of the matter is what you have
17 seen, you have seen this man because he sings. He is a
18 gospel singer?

19 A. Yes.

20 Q. And you have seen him sing in church before. Is
21 that correct?

22 A. True.

23 Q. Okay, and by the way, you have been in a situation
24 before where you have seen somebody you thought was somebody,
25 and it turned out to be somebody else. That has happened to
26 you before, hasn't it?

27 A. Yeah.

28 Q. And it has happened to a lot of people; right?

29 A. True.

1 Q. Okay. Now but in any event, when you came to talk
2 to the police, did you talk to the police that day?

3 A. They came in there, uh, that evening and they
4 called me to the office. 3:25.

5 Q. Okay, but you talked to somebody. Earlier you said
6 you saw somebody searching Mr. Simpson's car?

7 A. That was the police out front, yes.

8 Q. Oh, that was the police. Okay, good. You didn't
9 tell them that "I saw Curtis Flowers"; right?

10 A. No.

11 Q. Okay, and then you said that it came to you. You
12 were thinking in your mind and somehow in your head it came
13 to your mind that, at some point that it was Curtis Flowers,
14 and you said that it came to your mind that night; is that
15 right?

16 A. Uh-huh.

17 Q. Okay. Well, when the police talked to you that
18 day, you didn't tell them it was Curtis Flowers, did you?

19 A. No, I didn't.

20 Q. And did the police talk to you a day or so after
21 that; right?

22 A. I can't remember the exact date.

23 Q. Well, you didn't tell them then it was Curtis
24 Flowers?

25 A. No, I didn't.

26 Q. In fact, you went all the way to-- and you talked
27 to the police two or three times; isn't that correct?

28 A. True.

29 Q. Before they actually showed you pictures; right?

1 A. Right.

2 Q. And you didn't tell them it was Curtis Flowers any
3 of those times?

4 A. Uh-uh.

5 Q. In fact, that's why they were showing you
6 pictures. They were trying to figure out who it was; right?

7 A. True.

8 Q. So when you saw the pictures, you still didn't say
9 it was Curtis Flowers?

10 A. No.

11 Q. Now why didn't you just -- well, excuse me. So
12 here is the police showing you all these pictures, and at no
13 point are you saying it's Curtis Flowers; is that right?

14 A. I didn't, no.

15 Q. Okay. Well, in fact, we have talked before; isn't
16 that correct?

17 A. True.

18 Q. Okay. And you have also had an opportunity to talk
19 to Mr. Freelon; is that correct?

20 A. True.

21 Q. And actually I think what you told him is that you
22 actually told the police that it was Curtis Flowers the
23 second time you saw the police. Didn't you tell him that?

24 A. I remember, I can't exactly remember that
25 conversation.

26 Q. Okay. Well, okay, let's see. We will come back to
27 that in a minute. But in any event, you may have told him
28 that; is that right?

29 A. I can't exactly remember that conversation.

1 Q. Okay. Do you recall telling me or him that it
2 could have been that you told the police because we were
3 trying to figure out, you know, when this came to your mind
4 it was Curtis Flowers, when you told the police. Do you
5 remember telling somebody that it was the second time you saw
6 the police that you told them it was Curtis Flowers? You
7 don't remember saying that?

8 A. I can't remember that conversation.

9 Q. Okay. All right. Well, now the other thing that I
10 would like to ask you. (Pause.) Okay, well, do you remember
11 at this time, and I'm just going to ask you this if you
12 remember at this time. Do you remember at this time that you
13 never told, you never said anything about that person you saw
14 being Curtis Flowers until the time in the lineup if you even
15 said it then. I don't know if you even said it then, but do
16 you recall at this time that prior to the lineup, you never
17 said anything about it being Curtis Flowers? Do you recall
18 that?

19 A. Yeah, I recall that.

20 Q. You do recall that?

21 A. Uh-huh.

22 Q. Okay, well, let me see what you did say. I think
23 on the 10th of September, and let me see. That would be on
24 page -- okay.

25 (Pause while Defense Counsel confer.)

26 Q. We are going to go on into another area and come
27 back to that. And I'm just asking these questions because,
28 you know. As far as Mr. Simpson is concerned, you saw Mr.
29 Simpson a few days later; is that correct?

1 A. Yeah.

2 Q. Okay, in other words, I think that he was, after
3 this incident happened, he was away from the job. Did you
4 see him again that day?

5 A. He was bringing, he was bringing food in.

6 Q. Okay, you saw him then. You didn't tell him
7 anything about Curtis Flowers then; is that correct?

8 A. That's correct.

9 Q. Okay, but you did at some point talk to him, and
10 you told him, y'all had a conversation about somebody being
11 at his car; right?

12 A. True.

13 Q. And that was like 3 or 4 days later; right?

14 A. Now exactly how many days I can't remember.

15 Q. Well, it's true that he was away from the job for a
16 little while, and then he came back; is that right?

17 A. True.

18 Q. Okay. And at that particular time when you were
19 having a talk with him-- let me ask you this. Did you tell
20 him that the person that you saw had white shorts on or had
21 shorts on, white or any other color?

22 A. No, I didn't.

23 Q. Okay, did you tell him that the person you saw had
24 a cap on?

25 A. No, I didn't.

26 Q. Okay. Did you tell him that the person you saw,
27 let's see. Cap -- did you tell him what kind of shirt the
28 person had on?

29 A. No, I didn't.

1 Q. Did you tell him anything about the shoes the
2 person had on?

3 A. No, I didn't.

4 Q. And that's the only conversation you had with him.
5 So you wouldn't have told him that at any other time; is that
6 right?

7 A. No.

8 Q. At least according to what you are telling us; is
9 that right?

10 A. It's the truth.

11 Q. Okay, well, I'm not questioning whether it-- if he
12 says something different, that is wrong; right?

13 A. True.

14 Q. Okay. Now and in fact, when you made a statement
15 to the police, you told them, you really didn't give them
16 much of a description. You didn't really give them a very,
17 you didn't give them any description of the clothing at all,
18 did you?

19 A. I didn't give any.

20 Q. Okay. But you did say, in fact, the person did not
21 have a cap on. That's what you told them?

22 A. That's what I said.

23 Q. And the other thing is that you have had an
24 opportunity to, Ms. Snow, you have had an opportunity to hear
25 about this case on TV and in the news and things of that
26 nature; right?

27 A. True.

28 Q. One of the things that you can recall reading is
29 a-- and so you also knew about the reward that was offered in

1 the case; is that correct?

2 A. Yeah, true.

3 Q. And you have seen that actually in the newspapers
4 and elsewhere; is that right?

5 A. True.

6 Q. Now just to-- in fact, the reward is pretty common
7 knowledge, wasn't it?

8 A. It was.

9 Q. Okay, I want to just share this with you here
10 please. I'm looking--

11 BY MR. LUMUMBA: Well, I guess I should get it
12 marked -- from the interview on September 10th,
13 19--

14 BY MR. HORAN: What page?

15 BY MR. LUMUMBA: Page 8.

16 (Document shown to State's Counsel.)

17 BY MR. LUMUMBA:

18 Q. I'm something going to show you a document to
19 refresh your memory and then, or have it marked first.

20 BY THE COURT: For identification.

21 BY MR. LUMUMBA: For identification.

22 (TRANSCRIPT OF INTERVIEW WITH KATHERINE SNOW
23 WAS MARKED AS DEFENDANT'S EXHIBIT D-13 FOR
24 IDENTIFICATION.)

25 BY MR. LUMUMBA:

26 Q. I'm going to show you here what is D-13 for
27 identification purposes, and it says interview with Katherine
28 Snow. Do you recall that you were interviewed and Mr.
29 Freelon asked you some questions?

1 A. True.

2 Q. I'm going to ask you to look at page 8 here and see
3 if you can recall, and I just want to refresh your
4 recollection. And you see, okay, you see where these are
5 things that are underlined, okay, or highlighted, I think
6 they call it. Can you read this to yourself, and you can
7 read anything you want, but I am just pointing you to this
8 area. And once you get finished reading that, then I'm going
9 to see if your recollection is refreshed as to when you may
10 have told Mr. Freelon or if you told Mr. Freelon when was the
11 first time you told them it was Curtis Flowers.

12 A. (Pause while witness reads.) I am finished.

13 Q. So and here again, so when you talked to Mr.
14 Freelon, do you remember if you ever told him when it was
15 that the first time you said to the police that you thought
16 this man was Curtis Flowers?

17 A. I remember him screwing my words up.

18 Q. Oh, okay. This is on tape. Would you like to hear
19 it?

20 A. No, I don't have to hear it.

21 Q. But let me-- he screwed your words up?

22 A. I remember having to stop him and tell him I
23 remember what I seen that day.

24 Q. Okay, well, okay, I'm not asking you about that. I
25 am just asking you-- actually we are not talking about, this
26 doesn't even say anything about that day. This is talking
27 about when you told the police that you thought it was Curtis
28 Flowers. Isn't that what this is talking about?

29 A. Yes.

1 Q. Well, that is what the question is.

2 A. Okay.

3 Q. Do you recall telling him at any point now that you
4 told the police the second time you saw them that it was
5 Curtis Flowers?

6 A. I remember the time of telling him but--

7 Q. --Well, first of all, answer my question, and then
8 you can explain.

9 A. Okay.

10 Q. Do you recall telling him that the second time you
11 saw the police you said that you thought it was Curtis
12 Flowers?

13 A. I remember telling him that I seen, that I told the
14 police of Curtis Flowers. Do you want me to finish?

15 Q. What I'm-- did you tell him that you told the
16 police it was Curtis Flowers? Did you tell him that?

17 A. Uh-hum.

18 Q. And when did you say that you told them that?

19 A. The day of that meeting that he talked to me. I
20 don't remember the date or time that I told him that.

21 Q. Well, did, in fact, your taped statement say--
22 well, I'm still not quite clear on what you are saying. Are
23 you telling me that you did, you recall telling Mr. Freelon
24 that it was the second time that you said it was Curtis
25 Flowers? Does this refresh your memory as to that?

26 A. I remember telling him I had been there numerous of
27 times. I didn't know the exact one.

28 Q. Okay, okay. But do you recall telling him it was--
29 you don't remember saying the second time. It was you don't

1 know the exact time; right?

2 A. The day Mr. Freelon come down there I remember
3 conversating with him.

4 Q. Well, look. I am trying to focus on the question.
5 Now we might not be that far apart here. I'm just trying to
6 say is that you recall telling him that on one occasion when
7 you saw the police, and you told them it was Curtis Flowers?

8 A. Yes, I remember that.

9 Q. But you don't remember saying it was the second
10 time?

11 A. No, I don't.

12 Q. Okay, fine. You are not saying you didn't say it;
13 you just don't remember that?

14 A. True.

15 Q. But in any event, you know that when you talked to
16 the police, you have talked to the police on the day that the
17 incident occurred; right?

18 A. True.

19 Q. And you talked to the police-- when you say the
20 first time, actually you talked -- we were talking about the
21 first time and Mr. Freelon was talking about the first time
22 you actually went to the police station; right? Because you
23 told us that you had gone to the police station a couple of
24 times; right?

25 A. True.

26 Q. Okay. You didn't tell them the first time you went
27 to the police station; right? You know that; right?

28 A. I don't remember the exact dates that I went to the
29 police station.

1 Q. Well, forget about the dates. Whenever you went,
2 you never said on the first day you went to the police
3 station that it was Mr. Flowers?

4 A. No.

5 Q. And the first day that you went to the police
6 station was after the incident that you had seen-- well,
7 after the person you had seen in the parking lot; right?

8 A. True.

9 Q. And it was also after the first night, wasn't it?

10 A. It was after, after the incident that I went to the
11 police station.

12 Q. Okay. But then after that first night, you didn't
13 go right to the police station?

14 A. No.

15 Q. In fact, you didn't tell the police station until
16 seeing them several times, if at all, that you thought it was
17 Curtis Flowers. Isn't that true?

18 A. True.

19 Q. Okay. And it would be safe to say too, wouldn't
20 it, Ms. Snow, that there was a lot of talk in the community
21 about this incident and things of that nature and actually at
22 the place where you work? Isn't that correct?

23 A. True.

24 Q. There was a lot of things going around about-- and
25 I'm not asking you to say what they were because that would
26 be inappropriate, but there was a lot of discussion about
27 what the police were doing and what they weren't doing about
28 it and all that kind of stuff; right?

29 A. True.

1 Q. And who they were talking to and who they weren't
2 talking to. Is that true?

3 A. True.

4 Q. And they were raising names that they were
5 supposed to have been investigating and all that kind of
6 stuff; right?

7 A. They were saying a lot.

8 Q. Okay. And that was all happening at the place;
9 right?

10 A. Right.

11 Q. All that rumors was going around; right?

12 A. They were saying a bunch.

13 Q. Pardon?

14 A. They were saying much, plenty.

15 Q. A lot of rumors?

16 A. Uh-huh.

17 Q. By the way, let me just ask you. This person that
18 you saw, the person you saw, and you had to have seen him in
19 between 7:00 and 7:30; is that correct?

20 A. True.

21 Q. That person didn't have on a white T-shirt and
22 black pants as far as you can remember, did they?

23 A. I wasn't paying attention to his clothing.

24 (Pause while Defense Counsel confer.)

25 Q. Okay, the other thing is that-- somebody just
26 reminded me of this. At the time you saw the car, was the
27 windows down or up?

28 A. It was down.

29 Q. Okay. And-- okay.

1 BY MR. LUMUMBA: No further questions.

2 BY THE COURT: Redirect?

3 BY MR. EVANS: Thank you, Your Honor.

4 REDIRECT EXAMINATION BY MR. EVANS:

5 Q. Ms. Snow, first I will ask you, has the reward got
6 anything to do with you telling who you saw by that car?

7 A. No, it don't.

8 Q. Do you know who you saw by that car?

9 A. Yes, I do.

10 Q. Is it this Defendant sitting over here?

11 A. Yes, it is.

12 Q. Now you were shown a photo lineup; is that right?

13 A. True.

14 Q. Before you were shown this photo lineup, other than
15 the name, did you know who you had seen?

16 A. Yeah.

17 Q. You just couldn't place the name with him?

18 A. I had a problem placing the name with the face.

19 Q. Now I believe you even told Mr. Freelon when he
20 asked you in his statement that you said and if you would, on
21 page 8 of that statement, read the part that I have
22 highlighted right here if you can read it. It has been
23 highlighted twice.

24 A. "I was trying to put the name with the face, and I
25 hadn't heard nothing of Curtis Flowers that they had arrested
26 him or nothing, but I knew I had seen him."

27 Q. So all you were doing was trying to put the name
28 with the face that you knew?

29 A. Yeah.

1 Q. And when-- let me on page 6 when Mr. Freelon asked
2 you what kind of description you gave Doyle of who was
3 leaning up against his car. If you would, read what
4 description you gave Doyle.

5 A. "He was muscular, and his head was shaved and he
6 was dark skinned."

7 Q. I will hand you Exhibit 92 for identification and
8 ask you if this is the photo lineup that the police
9 department showed you or the law enforcement officers?

10 A. True.

11 BY MR. EVANS: I offer this into evidence,
12 Your Honor.

13 BY THE COURT: Any objection?

14 BY MR. LUMUMBA: No, sir. I have no objection
15 to that.

16 BY THE COURT: Let it be marked and admitted.

17 (PHOTO LINEUP SHOWN TO KATHERINE SNOW
18 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-92 FOR
19 IDENTIFICATION WAS NOW ADMITTED IN EVIDENCE.)

20 BY MR. EVANS:

21 Q. Ms. Snow, I will ask you to look at the back of
22 this photograph and ask you if this is the photograph that
23 you identified and if that is your name on the photograph?

24 A. It is.

25 BY MR. EVANS: May I pass this to the jury,
26 Your Honor?

27 BY THE COURT: It has been admitted. You may
28 do so.

29 (Exhibit S-92 passed to the jury.)

1 BY MR. EVANS: Your Honor, that's all we have
2 of this witness.

3 BY THE COURT: Is she finally excused?

4 BY MR. EVANS: Yes, sir.

5 BY MR. LUMUMBA: Yes, sir.

6 BY THE COURT: You are free to go, Ms. Snow.

7 WITNESS EXCUSED.

8 BY THE COURT: Who do you have next?

9 BY MR. HORAN: Bill Thornburg.

10 BY THE COURT: He hasn't been sworn, has he?

11 BY MR. EVANS: He was here but I'm not sure if
12 he was upstairs when they were being sworn.

13 (The witness enters the courtroom.)

14 BY THE COURT: Have you been sworn yet?

15 BY THE WITNESS: Yes, sir.

16 BILL THORNBURG,

17 a white male called to testify as a witness by the State of
18 Mississippi, having first been duly sworn, testified as
19 follows, to-wit:

20 BY THE COURT: State your name for the record,
21 please.

22 BY THE WITNESS: Bill Thornburg.

23 BY MR. HORAN: I would like for Mr. Evans to
24 get back before I proceed if that is all right.

25 BY THE COURT: Sure. He just went to get some
26 water.

27 (Mr. Evans returns to the courtroom.)

28 BY MR. HORAN: May I proceed, Your Honor?

29 BY THE COURT: Yes.

1 DIRECT EXAMINATION BY MR. HORAN:

2 Q. Please state your name for the record, if you
3 would.

4 A. Bill Thornburg.

5 Q. Mr. Thornburg, how are you employed at the present
6 time?

7 A. I'm employed with the Montgomery County Sheriff's
8 Department.

9 Q. I want to direct your attention back to the date of
10 July 16th, 1996. Were you so employed at that time?

11 A. Yes, sir.

12 Q. And you were, are you Chief Deputy there?

13 A. I was at that time, yes.

14 Q. Did you have an occasion to go to Tardy Furniture
15 Store there in Winona?

16 A. Yes, sir. I did.

17 Q. And you received a call to go to Tardy?

18 A. Yes, sir.

19 Q. Were you on duty that day?

20 A. Yes, sir.

21 Q. When you arrived at Tardy Furniture Store, would
22 you tell the Court and the jury who was there?

23 A. Well, it was a bunch of people outside, and I
24 remember Chief Hargrove being inside and another officer or
25 two that works for the police department.

26 Q. And at some point in time after you arrived at
27 Tardy Furniture Store, did you receive a call to go to
28 Angelica?

29 A. Yes, sir; I did.

1 Q. Okay, as you leave Tardy Furniture Store, how do
2 you go to Angelica, or how did you go that particular day?

3 A. I turned right right at Tardy's store there and
4 went down and hit Church Street and went all the way down
5 Church Street to Angelica.

6 Q. For what purpose did you go to Angelica?

7 A. I received a call that a vehicle had been broken
8 into there at Angelica.

9 BY MR. LUMUMBA: --Objection, excuse me. I
10 have no objection to him saying he received a call
11 and what he did when he got there, Judge. What I
12 have objection to is hearsay.

13 BY THE COURT: Okay, I think this is
14 admissible. Overruled.

15 BY MR. HORAN:

16 Q. Go ahead.

17 A. I went all the way down Church Street to Angelica.

18 Q. For what purpose?

19 A. To investigate, see what car had been broken into.

20 Q. And did you talk to anybody once you got there at
21 Angelica?

22 A. We went inside and was talking to the manager, and
23 we wanted to know where Doyle Simpson was. And they said he
24 had gone.

25 BY MR. LUMUMBA: Objection.

26 BY THE COURT: Well, it's not--

27 BY MR. HORAN: --I will go--

28 BY THE COURT: --It's not admitted for--

29 BY MR. HORAN: Right. It's not offered for

1 the truth of the matter.

2 **BY THE COURT:** It would be technically
3 hearsay, but it's not for the truth of the matter.

4 **BY MR. HORAN:** That's right.

5 **BY MR. HORAN:**

6 Q. At some point in time did you come in contact with
7 Mr. Simpson?

8 A. Yes, sir.

9 Q. And did you talk with him? Don't go into the
10 conversation, but did you talk with Mr. Simpson?

11 A. Yes, sir.

12 Q. Did he give you information with reference to his
13 automobile?

14 A. Yes, sir. It was parked outside, and he said it
15 had been broken into--

16 **BY MR. LUMUMBA:** --Objection--

17 **BY THE WITNESS:** --a gun stolen.

18 **BY MR. LUMUMBA:** Objection.

19 **BY THE COURT:** Sustained.

20 **BY MR. HORAN:**

21 Q. Don't go into that, but you did talk with Mr.
22 Simpson?

23 A. Yes, sir.

24 Q. Did he give you information about what type of
25 weapon was missing out of his vehicle?

26 A. Yes, sir.

27 Q. What did you do then?

28 A. We went back to the furniture store.

29 Q. Did the automobile, Mr. Simpson's automobile, was

1 it impounded, taken into custody at that time?

2 BY MR. LUMUMBA: Judge, the questions are--

3 BY THE WITNESS: --not by me, no, sir--

4 BY MR. LUMUMBA: --also leading.

5 BY MR. HORAN: Your Honor, whether or not an
6 automobile is impounded, that is not suggesting an
7 answer, first of all. I will rephrase but--

8 BY MR. LUMUMBA: --Well, actually I--

9 BY MR. HORAN: --I don't see how in the world
10 he would object to that--

11 BY MR. LUMUMBA: --Excuse me. I will even
12 withdraw the objection on that one if we can get a
13 promise that he will stop doing it because just
14 about every question is leading. I'm not trying to
15 be critical.

16 BY MR. HORAN: I am not leading. I'm not
17 suggesting an answer. I will rephrase.

18 BY THE COURT: Okay, yeah.

19 BY MR. HORAN:

20 Q. At some point in time was the vehicle processed?

21 A. Yes, sir.

22 Q. Did you have an occasion, Mr. Thornburg, to proceed
23 to an area in the county for the purpose of retrieving any
24 physical evidence?

25 A. Yes, sir.

26 Q. Okay, on hold on just a minute. Court will indulge
27 me. (Pause while Counsel looks at exhibits.) Okay, you were
28 stating that you went to Mr. Simpson's residence?

29 A. Yes, sir.

1 Q. And who went with you?

2 A. I believe it was Chief of Police, Bob Tatum.

3 Q. Okay, and was that on or about the first day of
4 August of '96. Was that about the time? Do you remember?

5 A. It was earlier than that.

6 Q. Okay, do you remember what day that was?

7 A. Not really. I think it was a day or two
8 afterwards.

9 Q. Okay. And did you do anything once y'all got there
10 at Mr. Simpson's?

11 A. Yes, sir.

12 Q. Okay, what did y'all do?

13 A. I had a metal detector and was looking for some
14 .380 hulls and projectiles.

15 Q. Why were you looking for .380 projectiles?

16 A. The gun that was stolen was a .380. The gun that
17 the murders was .380.

18 BY MR. LUMUMBA: Judge, let me say this. My
19 objection to this, first of all, this officer does
20 not know that any guns were stolen. See, that is
21 the problem of hearsay. I don't have him having
22 any--

23 BY MR. HORAN: --Your Honor, that is not
24 offered--

25 BY THE COURT: --Wait. Wait. Let him
26 finish.

27 BY MR. LUMUMBA: My objection is there is no
28 foundation, improper foundation for the officer to
29 testify in that way. If he-- I mean I don't have

1 any problem talking about why he went there in
2 terms of he was looking for some projectiles and
3 then presumably other witnesses will explain this.
4 But he can't testify to what somebody else told him
5 one way or the other.

6 BY MR. HORAN: Your Honor, he is explaining
7 his actions--

8 BY THE COURT: --Well, he can testify as to
9 what the basis of his investigation was. Whether
10 or not that actually happened may or may not be
11 true. But he is entitled to say why he went to
12 investigate and why he was looking for, and if that
13 was from hearsay, that is just admissible.

14 BY MR. HORAN: Thank you, Your Honor.

15 BY MR. HORAN:

16 Q. I assume that from what you were testifying, that
17 you did, you gained some knowledge about the crime scene
18 investigation; right, Mr. Thornburg?

19 A. Yes, sir.

20 Q. What information did you have regarding what type
21 of weapon was used at Tardy Furniture Store?

22 A. .380.

23 Q. And as a result of your investigation involving Mr.
24 Simpson's car, what type of information, what was the
25 information that you had of the type of weapon stolen from
26 Mr.--

27 BY MR. LUMUMBA: --Judge, I just have a
28 continuing objection.

29 BY THE COURT: All right.

1 BY THE WITNESS:

2 A. .380.

3 Q. Okay. I want to hand you State's Exhibit number 89
4 marked for identification purposes. Can you tell the jury
5 what that is, what it appears to be?

6 A. Yes, sir.

7 Q. What is that?

8 A. It's a .380 projectile that I retrieved from a
9 cedar post in Doyle Simpson's mother's back yard.

10 Q. Okay, and why were you attempting-- well, I will
11 rephrase the question. Did you have information that there
12 may be some projectiles in that post?

13 A. Yes, sir.

14 BY MR. HORAN: I move for introduction of this
15 at this time.

16 BY MR. LUMUMBA: The projectile?

17 BY MR. HORAN: Right.

18 BY MR. LUMUMBA: No objection.

19 BY THE COURT: Okay, let it be marked and
20 entered.

21 (THE WHITE ENVELOPE CONTAINING A PROJECTILE
22 PREVIOUSLY MARKED AS STATE'S EXHIBIT NUMBER S-89
23 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

24 BY MR. HORAN:

25 Q. You actually dug it out of the post?

26 A. Yes, sir.

27 Q. And you put it in that bag, and it's in materially
28 the same condition today, that bag is, the envelope, that it
29 was on the day that you removed or placed it in there?

1 A. Yes, sir.

2 Q. Okay. Did you have an occasion to go to the
3 residence of Connie Moore at any time?

4 A. Yes, sir.

5 Q. Do you remember about what date that was?

6 A. I believe that was in August.

7 Q. And for what purpose?

8 A. We went there and was really looking for a gun.
9 And they signed a permission to search, and we went in and
10 searched. We didn't find a gun.

11 Q. Did you find anything else at that time?

12 A. Found a Fila shoe box.

13 Q. Where did you find that in that residence?

14 A. It was in a dresser drawer in the back bedroom.

15 Q. Did you have any information as to whether or not
16 the Defendant, that was the Defendant's bedroom?

17 BY MR. LUMUMBA: Objection, Judge. It has got
18 to be hearsay.

19 BY MR. HORAN: Why they searched that area,
20 Your Honor. They wouldn't search it for any other
21 reason.

22 BY MR. LUMUMBA: Hold it; hold it. It has got
23 to be hearsay. I mean, you know, if they--

24 BY MR. HORAN: --I would like to explain why
25 he was searching in a particular area, Your Honor.

26 BY MR. LUMUMBA: Judge, may we approach?

27 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
28 THE JURY AS FOLLOWS:)

29 BY MR. HORAN: I will rephrase it. I was just

1 asking whether or not that was, that he had
2 information that was Mr. Flowers' residence, and I
3 will rephrase it.

4 BY MR. LUMUMBA: That is clearly offered for
5 the truth of the matter asserted therein. If, you
6 know, the fact that he found the box in a room is
7 fine. Let the person who says it is Curtis' room
8 come in here and say it. Don't let him say it.

9 BY THE COURT: He said he is going to rephrase
10 it, and just ask him if that was, if they searched
11 it because they thought that was Curtis'
12 residence. Do you have any objection to that?

13 BY MR. LUMUMBA: What?

14 BY THE COURT: Wait, wait a minute, Kevin.

15 BY MR. LUMUMBA: Judge, let me just say this.
16 See, I don't understand why they feel that they
17 have the right through a police officer who knows
18 nothing other than what people tell him to get this
19 kind of information in. It's not relevant to the
20 jury why he searched it. If we did file a motion
21 to suppress, it has been denied. I can't even
22 remember if we did, but it has been denied. That
23 would be relevant to you to know that, you know, to
24 know that it was published, not to the jury. The
25 only thing relevant to the jury, it's relevant to
26 the jury whether it was his room, yes.

27 BY THE COURT: I'm going to let him testify to
28 this, that he can testify to the search, where he
29 found the stuff. He can describe the areas where

1 he searched, and he can describe any differences he
2 may have seen between the rooms, whatever like
3 that. As to whether he actually stayed there, I
4 think the person that knows that ought to be the
5 one to testify to that.

6 BY MR. HORAN: While I am asking, did they
7 have any information that that may or may not be
8 his residence. You have to explain to the jury why
9 they searched that particular house. It's not his
10 name.

11 BY MR. LUMUMBA: No, no--

12 BY THE COURT: --well, I think--

13 BY MR. EVANS: --Any witness could testify who
14 lived at a certain residence, and that wouldn't be
15 hearsay. If I testify where you live, that
16 wouldn't be hearsay even though you--

17 BY THE COURT: --I'm going to allow him to
18 testify as to he had information that's where he
19 lived. As far as the rest of it inside the house,
20 I think it ought to be--

21 BY MR. HORAN: Okay.

22 END BENCH CONFERENCE.

23 BY THE COURT: That objection is sustained and
24 in part and overruled in part.

25 BY MR. HORAN: I will rephrase the question,
26 Your Honor.

27 BY MR. HORAN:

28 Q. Do you have information that--

29 BY THE COURT: --Mr. Horan. I have been

1 informed that the jurors need a break. We will
2 take just a few minutes.

3 (FOLLOWING AN AFTERNOON RECESS ON MARCH 25,
4 1999, THE TRIAL CONTINUED IN OPEN COURT WITH THE
5 COURT, ALL COUNSEL, THE DEFENDANT, AND THE JURY ALL
6 PRESENT AS FOLLOWS:)

7 **BY THE COURT:** You may continue, Mr. Horan.

8 BY MR. HORAN: Thank you, Your Honor.

9 CONTINUED DIRECT EXAMINATION BY MR. HORAN:

10 Q. Mr. Thornburg, I believe you were talking about the
11 search of Connie Moore's residence?

12 A. Yes, sir.

13 Q. How many times did you search that particular
14 residence?

15 A. Twice.

16 Q. Okay, the first time did you recover this tennis
17 shoe box?

18 A. No, sir.

19 Q. Okay, did you have any reason?

20 A. At that time I didn't have any reason.

21 Q. Okay, the second time you went back did you recover
22 this tennis shoe box?

23 A. Yes, sir.

24 Q. Okay, would you tell the Court and the jury where
25 in the residence you recovered the tennis shoe box. If you
26 went in the house, describe how you went to the area, you
27 would go to the area--

28 BY MR. LUMUMBA: --Well, Judge, can he just
29 testify now because--

1 BY MR. HORAN: Describe how he got to the
2 tennis shoe box.

3 BY MR. LUMUMBA: Well, yeah, describe how he
4 got to it. I have no objection to that question.
5 How he got it, I have no problem describing how he
6 got it.

7 BY THE COURT: Okay.

8 BY MR. LUMUMBA: I think you will see what I'm
9 talking about.

10 BY MR. HORAN:

11 Q. Okay, walking in the door of that residence, tell
12 the jury how you would get to the location where you found
13 the tennis shoe box.

14 A. When you walk in the front door, it's a living
15 room, and there is a hallway to the left. All the way to the
16 end of the hallway on the right side, the back bedroom.

17 Q. Okay, to your personal knowledge do you know whose
18 bedroom that was?

19 BY MR. LUMUMBA: Uh.

20 BY THE COURT: He can answer that if he knows.

21 BY MR. LUMUMBA: He can answer that one,
22 personal knowledge; right.

23 BY THE WITNESS:

24 A. Yes, sir.

25 Q. Whose was that?

26 A. It was Connie's.

27 Q. All right, anyone else's to your personal
28 knowledge?

29 A. Sir?

1 Q. Anyone else's to your personal knowledge?

2 BY MR. LUMUMBA: Well, his personal knowledge
3 is not what somebody else told him, Judge. That's
4 what I object to.

5 BY MR. HORAN: He observed the contents of the
6 room, Your Honor.

7 BY THE COURT: But he has been asked his
8 personal knowledge. You are entitled to
9 cross-examine him about that, but that question is
10 proper.

11 BY MR. HORAN:

12 Q. You can answer.

13 A. And Curtis'.

14 Q. Curtis Flowers, the Defendant?

15 A. (Witness nods his head.)

16 Q. All right, you and Jack Matthews investigated with
17 the Highway Patrol. Y'all went back out to Doyle Simpson's
18 residence after you recovered this particular projectile, did
19 you not?

20 A. Yes, sir.

21 Q. I want to hand you State's Exhibit 76, and does
22 that appear to be the package that Mr. Matthews placed the
23 projectile-- did y'all find another projectile?

24 A. Yes, sir.

25 Q. Out of the same post?

26 A. Yes, sir.

27 Q. Does that appear to be the package?

28 A. Yes, sir.

29 BY MR HORAN: I move for introduction.

1 **BY THE COURT:** Any objection to that?

2 BY MR. LUMUMBA: No, sir.

3 **BY THE COURT:** Let it be marked.

4 (BROWN ENVELOPE CONTAINING SPENT PROJECTILE
5 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-76 FOR
6 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

7 BY MR. HORAN:

8 Q. Mr. Thornburg, I think I covered this with another
9 witness but I will ask you anyway. Is Tardy Furniture
10 located in Montgomery County?

11 A. Yes, sir.

12 Q. State of Mississippi?

13 A. Yes, sir.

14 Q. When you left Tardy Furniture, how long did it take
15 you to get to Angelica on the morning of the murders?

16 A. Probably 3, 4 minutes. You know, I don't remember
17 the exact time or how the traffic was.

18 Q. Okay, how long were you there before you came in
19 contact with Mr. Simpson?

20 A. Probably 20 minutes.

21 BY MR. HORAN: Okay. No further questions.

22 BY MR. LUMUMBA: May I proceed?

23 BY MR. EVANS: Give me a second.

24 BY MR. LUMUMBA: Okay.

25 (Pause while State's Counsel confer.)

26 CONTINUED DIRECT EXAMINATION BY MR. HORAN:

27 Q. Okay. This tennis shoe box, is it materially in
28 the same condition today as it was when-- I know there is
29 some writing on here and stuff, but the box in general, is it

1 materially in the same condition today as it was when you
2 recovered it from that residence?

3 A. Yes, sir.

4 Q. Okay, do you know what address that is over there
5 where Mr. Flowers and Ms. Moore?

6 A. No, sir.

7 Q. Do you know what street it's on?

8 A. McNutt, I believe.

9 BY MR. HORAN: Okay, I move for the
10 introduction of this particular exhibit.

11 BY MR. LUMUMBA: I have no objection to that
12 box.

13 BY THE COURT: Let it be marked.

14 (EMPTY FILA TENNIS SHOE BOX PREVIOUSLY MARKED
15 AS STATE'S EXHIBIT S-61 FOR IDENTIFICATION WAS NOW
16 RECEIVED IN EVIDENCE.)

17 BY MR HORAN: I tender.

18 CROSS-EXAMINATION BY MR. LUMUMBA:

19 Q. Good afternoon.

20 A. How you do, sir.

21 Q. Officer Thornburg. Is it--

22 BY MR. FREELON: Chokwe.

23 (Defense Counsel confer briefly. One of their
24 witnesses had entered the courtroom. Witness
25 left.)

26 BY MR. LUMUMBA:

27 Q. Good afternoon. Now is it officer, sergeant?

28 A. No, just deputy.

29 Q. Deputy, okay, Deputy Thornburg. Deputy Thornburg,

1 point out-- I would like to ask you these questions. A), you
2 didn't live at that house, did you, that house on McNutt
3 where you went to where Connie was? You didn't live there,
4 did you?

5 A. No, sir.

6 Q. Okay, so you, you have never seen anybody sleep in
7 that bedroom, have you?

8 A. No, sir.

9 Q. Okay, so the only information you had is what
10 somebody else told you; isn't that correct?

11 A. Yes.

12 Q. Is that right?

13 A. (Witness nods his head.) I have never seen anybody
14 sleep in there.

15 Q. Right, so you are just basing it on what, you know,
16 what have people told you about what was what; is that
17 correct? And you don't know how accurate it is or inaccurate
18 it is; isn't that true?

19 A. I have never seen them sleep back there.

20 Q. You didn't see any of Mr. Flowers' identification
21 in the room or anything like that, did you?

22 A. I don't remember seeing any. I wasn't looking for
23 identification.

24 Q. Okay, I see. But in any event, whatever though,
25 actually, the way you got that box, you didn't go back in the
26 room and see that box, did you? You didn't go back in that
27 room and take that box, did you?

28 A. No, sir. I did not.

29 Q. Connie walked back into the room and gave you the

1 box, didn't she?

2 A. We told her we came back after the shoe box, and
3 she came, went back to the bedroom and got it and brought it
4 out there.

5 Q. And she had consented to the search. According to
6 what you are saying, she had consented to the search anyway;
7 right?

8 A. She consented to it.

9 Q. Right. She just went back and got you the box and
10 gave it to you; right?

11 A. That's right.

12 Q. Okay. Now while you were there, did you see any of
13 her children?

14 A. I don't remember seeing any. I might have.

15 Q. Are you aware of the fact that she has two male
16 childs?

17 A. Yes, sir.

18 Q. Okay. And you don't suspect they are the only
19 ones, that she was the only one in the City of Winona that
20 had a Fila shoe box, do you?

21 A. I wouldn't know.

22 Q. Fila is a pretty popular tennis shoe, isn't it?

23 A. Yes, sir.

24 Q. You see them advertised on TV all the time, don't
25 you?

26 A. Yes, sir.

27 Q. One of the big, like Nike, Fila and Reebok and
28 stuff like that; right?

29 A. Yes, sir.

1 Q. Okay. So in any event Connie gave you the box;
2 right?

3 A. Yes, sir.

4 Q. Did you submit this box, by the way, for
5 fingerprints?

6 A. Yes, sir.

7 Q. Okay, and you, of course, are not a fingerprint
8 expert, so you couldn't tell me of your own personal
9 knowledge what the results were; right?

10 A. No, sir.

11 Q. But in any event, let's go on to something else for
12 a minute. You don't know how long-- the box, since you guys
13 had the box, you didn't rough it up or anything, did you?

14 A. No, sir.

15 Q. Okay, the box seems like it's kind of torn a little
16 bit?

17 A. It is basically the same way it was when we got it.

18 Q. Yeah, but I mean you don't suppose they sell them
19 like this, do you? It looks like it is coming apart a little
20 bit, doesn't it?

21 A. Right.

22 Q. Okay, so it looks like it has been around a while;
23 right?

24 A. It has.

25 Q. So you don't know how long it has been around?

26 A. I do not.

27 Q. You don't know how long it has been there, and you
28 don't know who the box belongs to of your own personal
29 knowledge, do you?

1 A. Not personally, no, sir.

2 Q. Okay. And in fact, you don't even know -- I am
3 sure you have a household, and you have a family and stuff
4 like that?

5 A. Yes, sir.

6 Q. And your family sometimes they get things from
7 other families, either borrow it or gifts or things of that
8 nature?

9 A. Well, not really.

10 Q. Oh, that doesn't happen? Okay. Do you have
11 sometimes where perhaps your wife might send something to
12 some other lady--

13 BY MR. HORAN: --Your Honor, he can argue this
14 in closing arguments. It's not relevant to ask
15 this witness this type of question. What he does
16 or what his wife does or his aunt does doesn't make
17 any difference, Your Honor.

18 BY THE COURT: I will give you some latitude
19 on it, but I want you to get to point.

20 BY MR. LUMUMBA: Okay, all right.

21 BY MR. LUMUMBA:

22 Q. The point is that frequently people might actually
23 have boxes which one thing comes in, and they might put
24 something else in it and send it somewhere else. Isn't that
25 true?

26 A. It's possible. I don't--

27 Q. I mean in other words, boxes frequently are in
28 homes where they don't even originate at; isn't that right?

29 A. I don't know.

1 Q. That never happened at your house?

2 A. Not to my knowledge.

3 Q. Okay, all right. Okay, but in any event, let me
4 ask you this. You also have no personal knowledge of
5 whether or not anybody's car was actually ever broken into,
6 do you?

7 A. All I got is he said his car had been broken into.

8 Q. That's what he said; right? Is that what he said?

9 A. Yes, sir. And he--

10 Q. --Were you also there when he said that he had
11 gotten the gun from an uncle? Simpson?

12 A. No, sir.

13 Q. He didn't tell you that?

14 A. No-- yeah, he did. He did, when I asked him--

15 Q. --And it turned out that he was lying--

16 BY MR. HORAN: --Objection, Your Honor. He
17 can't go do into this.

18 BY THE COURT: Well, you can't.

19 BY MR. LUMUMBA: Well, let me rephrase it.

20 BY MR. LUMUMBA:

21 Q. Basically you were relying on what he said; right?

22 A. Right.

23 Q. So if you rely on a person, then you would like to
24 know how reliable he is; right?

25 A. Well, I would like to know if he is telling the
26 truth.

27 Q. Right, and you judge a person if he is telling the
28 truth based upon whether he tells the truth at other times
29 also; right?

1 A. Yeah, a lot of times you do.

2 Q. Okay, and in this case you had a man here who you
3 caught in a lie about where he got the gun from in the first
4 place?

5 BY MR. HORAN: Your Honor, did I not object to
6 this?

7 BY THE COURT: You haven't laid that
8 predicate. You may be able to ask that, but you
9 can't ask it that way.

10 BY MR. LUMUMBA: Okay.

11 BY MR. LUMUMBA:

12 Q. Is it a fact that at some point in time you
13 inquired, you had a conversation with Doyle Simpson, the same
14 person who told you about the gun? You had a conversation
15 with him; is that correct?

16 A. Yes, sir.

17 Q. And did he tell you about the gun that-- did he
18 tell you about a gun, a .380?

19 A. Yes, sir.

20 BY MR. HORAN: Your Honor, I object to this.
21 The reason I object is because Doyle Simpson is
22 going to testify. If Doyle Simpson denies making a
23 statement, he can put Mr. Thornburg on to impeach
24 him.

25 BY THE COURT: Let me see y'all up here.

26 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
27 THE JURY AS FOLLOWS:)

28 BY MR. HORAN: Simpson has not testified yet,
29 Your Honor, and has not admitted or denied making

1 the statement. He can't go into it. This is
2 highly improper.

3 BY MR. LUMUMBA: See, Judge--

4 BY THE COURT: --Well, why can't he testify
5 that he, when he asked him about the gun, that he
6 found out, that he found out his statement was not
7 true about the gun?

8 BY MR. HORAN: It's not at that point in time
9 though, Your Honor, when you report--

10 BY MR. EVANS: --It has got to be used for
11 impeachment of Doyle Simpson.

12 BY MR. HORAN: This is some time after that.

13 BY MR. LUMUMBA: See, Judge, see, my problem
14 is they are using Doyle Simpson's word to decide to
15 justify as giving some reliability to the police
16 officers' reasons for acting. That's why you talk
17 about why a police--

18 BY MR. HORAN: --It doesn't.

19 BY MR. LUMUMBA: Excuse me, please. See, the
20 thing is you can't have it both ways. You can't
21 allow him to testify what information he was
22 operating on, and when it turns out that the person
23 with whom he was relying upon also gave unreliable
24 information about the same thing.

25 BY THE COURT: No, but that is not the law
26 because he can rely on a lie to investigate. That
27 is the lie-- I mean that is the truth. I mean that
28 is the Supreme Court, the United States Supreme
29 Court has said it doesn't have to be true, and if

1 they in good faith rely on it, that's all they have
2 got to do. So let's move on. I'm going to sustain
3 the objection. Although-- come back. You know,
4 you are entitled to recall him after Simpson
5 testifies if you want to.

6 BY MR. LUMUMBA: Okay.

7 END BENCH CONFERENCE

8 BY MR. LUMUMBA:

9 Q. Without saying what is said, is it true that Mr.
10 Simpson said something to you about where the gun originated
11 at?

12 A. Yes, sir.

13 Q. And is it also true that you did further
14 investigation of that?

15 A. Yes.

16 Q. Don't answer this, and I'm going to ask it and see
17 if it's appropriate. Did it also turn out that the
18 information based upon your further investigation turned out
19 to be untrue?

20 A. Yes, sir.

21 BY MR. HORAN: I'm not going to object, Your
22 Honor.

23 BY THE COURT: Okay.

24 BY MR. EVANS: The only thing, Your Honor,
25 since we have not been allowed to go into the stuff
26 on hearsay, we would like to be able to go back now
27 and ask Mr. Thornburg all these questions.

28 BY THE COURT: Let me field them as y'all
29 raise them, okay.

1 BY MR. LUMUMBA: Okay, fine.

2 BY MR. LUMUMBA:

3 Q. Okay, now let me ask you this. I think you said
4 that when you arrived at Angelica, Mr. Simpson wasn't there;
5 is that correct?

6 A. Yes, sir.

7 Q. Now Mr. Simpson-- you don't know who-- Mr. Simpson
8 didn't call you; right?

9 A. No, sir.

10 Q. Okay, and you don't know who called the police.
11 You don't even know whether he called the police, do you?

12 A. No, sir. I don't know who called.

13 Q. Okay. But when you arrived at the plant, you
14 talked to someone else; is that correct?

15 A. Yes, sir.

16 Q. Okay. At some point he came; is that right?

17 A. Yes, sir.

18 Q. Before he came, and you can correct me if I am
19 wrong because I am not sure of this, but I know at some point
20 Emmitt Simpson showed up too; right?

21 A. Yes, sir.

22 Q. Did he show up before Mr. Doyle Simpson?

23 A. Before; yes, sir.

24 Q. In fact, when you saw Emmitt Simpson, he was
25 running; right?

26 A. Yes, sir.

27 Q. Sweating; right? Sweating like he was--

28 A. Yeah, in July. It was hot.

29 Q. Sweating and running and excited; right?

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 A. Well, he might have been excited. I don't--

2 Q. Could you see that he was excited? He was running
3 around out there and excited. He told you something that he
4 had been accused of; isn't that correct?

5 A. Yes, sir.

6 Q. And you stopped him when you saw him running. Did
7 you go after him or somebody went after him?

8 A. Yes, sir.

9 Q. Okay. And did he tell you he had been accused of
10 something by Doyle?

11 A. Yes, sir.

12 Q. Did he tell you that Doyle had accused him of
13 breaking in the car and taking the gun?

14 A. Yes, sir.

15 Q. Now this car that Doyle drove, was this an older
16 model brown car, kind of dirty and dusty?

17 A. Yes, sir; it was.

18 Q. And then Mr. Simpson came; is that correct?

19 A. Yes, sir.

20 Q. And you interviewed him about, about his car; is
21 that correct?

22 A. Yes, sir, went out and looked at it.

23 Q. Okay, now let me ask you this. He didn't come to
24 the police station and give you this report. You came to
25 him; is that right?

26 A. Yes, sir.

27 (Pause while Mr. Lumumba gets a photograph and
28 then shows it Counsel opposite.)

29 BY MR. EVANS: We have got the same

1 photographs introduced already. They are up there
2 on her desk.

3 (Mr. Lumumba gets some photographic exhibits.)

4 BY MR. LUMUMBA:

5 Q. I'm showing you Exhibits 43 and 42.

6 A. (Pause while witness looks at exhibits.)

7 Q. What are those if you know?

8 A. I can't tell about this one, but this car looks
9 like Doyle Simpson's.

10 Q. Okay, so that's the car that you saw that day when
11 you saw Doyle Simpson's car?

12 A. It looks like it, yes.

13 Q. And for the record that is the one with the side
14 view; is that correct?

15 A. Yes, sir.

16 Q. And that is a brown car; is that correct?

17 A. Right.

18 BY MR. LUMUMBA: And that is S-43 that the
19 witness can identify, Judge, and it's S-42 which
20 has a back view where you don't really know for
21 sure; is that correct?

22 BY THE WITNESS: Right.

23 BY MR. EVANS: Your Honor, I think we have
24 already introduced these into evidence through
25 Melissa Schoene.

26 BY THE COURT: Well, he just--

27 BY MR. EVANS: --Look at the back and see if
28 they are already in evidence.

29 BY MR. LUMUMBA: They appear to be in

1 evidence. They have marked out--

2 BY MR. EVANS: --Yeah, they are already in
3 evidence.

4 BY THE COURT: Okay.

5 BY MR. LUMUMBA:

6 Q. Was that car seized also, if you know?

7 A. At that time it was not. I don't know. It may
8 have been at a later date. I don't know. I couldn't really
9 say.

10 BY MR. LUMUMBA: I have no-- just one second,
11 Judge, to make sure.

12 Q. Was the car kind of brown and tan, kind of two
13 tone?

14 A. Yes, sir.

15 Q. You didn't see Curtis Flowers with Doyle Simpson at
16 all; right?

17 A. No, sir. I did not.

18 Q. You didn't see Curtis Flowers anywhere in the area,
19 did you?

20 A. No, sir. I did not.

21 Q. But what you did see is you saw Doyle eventually;
22 is that correct?

23 A. Yes, sir.

24 Q. And you saw Emmitt Simpson running across the lot?

25 A. Yes, sir.

26 Q. Expressing his concerns; is that correct?

27 A. I saw him running around the building.

28 Q. And then he said to you what you told me he said to
29 you when you talked to him; is that right?

1 A. Right.

2 BY MR. LUMUMBA: Okay. I have no further
3 questions of this witness.

4 REDIRECT EXAMINATION BY MR. HORAN:

5 Q. Mr. Thornburg, when you received the call, was the
6 District Attorney there at the store? Do you remember that?
7 Do you remember seeing him there?

8 A. No, sir.

9 Q. Were there other officers there?

10 A. Yes, sir.

11 Q. Okay. And I assume that someone had to come and
12 get you?

13 BY MR. LUMUMBA: Judge, I have to object to
14 what he assumed.

15 BY MR. HORAN: I will rephrase the question.

16 BY MR. HORAN:

17 Q. How did you come to know that there was a call for
18 you to go to Angelica's?

19 A. The dispatcher at the jail was calling for me, and
20 somebody came inside and told me I needed to call the jail.

21 Q. Do you remember who all was in there with you at
22 that time?

23 A. I remember Chief Hargrove, and there was several
24 standing outside. I don't remember who.

25 Q. So that information regarding what had happened at
26 the Tardy Furniture Store had been transmitted over at least
27 your radio?

28 A. Yes, sir.

29 Q. That you are aware of?

1 A. Yes, sir.

2 Q. All right. Tell us what happened when you got down
3 to Angelica. What did you do, and who did you talk with
4 first?

5 A. We went inside and was talking to the plant
6 manager.

7 Q. Okay, what information did the plant manager give?

8 A. And we asked for Doyle.

9 Q. Okay. And they said he is done clocked out and
10 gone.

11 BY MR. LUMUMBA: Excuse me, Judge. Hearsay;
12 objection.

13 BY THE COURT: Right, but there again it's not
14 to prove the truth of the matter asserted. It's
15 just a preliminary matter.

16 BY MR. HORAN:

17 Q. And you did talk to Emmitt Simpson, did you not?

18 A. Yes, sir.

19 Q. And apparently there was some knowledge, Emmitt
20 Simpson had some knowledge that you were wanting to know
21 about; right?

22 A. Yes, sir.

23 Q. And what did you ask Mr. Simpson, Emmitt Simpson?

24 A. When we got around to the back, he was already at
25 the back dock back there on the back side. And he told us
26 that his brother had accused him of breaking in his van-- I
27 mean his car and stealing his gun.

28 Q. Okay, and did he say where he saw his brother? Was
29 he talking about Doyle?

1 A. Right. No, sir. He didn't mention where he had
2 seen him.

3 Q. Now the information that you got about the post
4 that contained the two projectiles, being Exhibit 76 and I
5 believe it's 89, these two projectiles. Who gave you this
6 information?

7 A. If I remember correctly, I asked Doyle had he ever
8 shot his pistol.

9 Q. So Doyle Simpson took you to his house and showed
10 you?

11 BY MR. LUMUMBA: --Objection; leading. It is
12 hearsay too.

13 BY THE COURT: Yes, sir. That's leading.

14 BY MR. HORAN:

15 Q. Mr. Simpson, did he accompany you to his residence?

16 A. Yes, sir.

17 Q. When y'all recovered those?

18 A. Yes, sir.

19 Q. Did he indicate to you the post that he fired into?

20 A. Yes, sir.

21 BY MR. LUMUMBA: Objection.

22 BY MR. HORAN: No further questions of this
23 witness.

24 BY THE COURT: That last one was not leading.
25 That was overruled. Okay, is he finally excused?

26 BY MR. LUMUMBA: Yes-- well, no. I will ask
27 him to remain on call.

28 BY THE COURT: Okay. You will need to stay,
29 Mr. Thornburg. Who do you have next?

1 WITNESS LEAVES COURTROOM.

2 BY MR. EVANS: Doyle Simpson.

3 BY THE COURT: Have you been sworn, Mr.
4 Simpson.

5 BY THE WITNESS: No, sir.

6 BY THE COURT: Raise your right hand.

7 DOYLE SIMPSON,

8 a black male called to testify as a witness by the State of
9 Mississippi, having first been duly sworn, testified as
10 follows, to-wit:

11 BY THE COURT: Have a seat right there,
12 please, sir.

13 DIRECT EXAMINATION BY MR. EVANS:

14 Q. State your full name, please.

15 A. Doyle Simpson.

16 Q. Mr. Simpson, where do you live?

17 A. 121 Poorhouse Road.

18 Q. And is that in Winona, Mississippi?

19 A. That's in Winona.

20 Q. All right, Mr. Simpson. I want to direct your
21 attention back to the day that the killings occurred at Tardy
22 Furniture in Winona, Mississippi. Do you remember that day?

23 A. Yes, I do.

24 Q. Were you working that day?

25 A. Yes, I was.

26 Q. Where were you working?

27 A. Angelica.

28 Q. At that time what type of vehicle did you have?

29 A. Pontiac Phoenix.

1 Q. All right, I want to show you two photographs. One
2 is the side of a car, and one is the back of a car and ask
3 you if this is the car that you had at that time?

4 A. That's it. Yes, sir.

5 Q. Okay.

6 BY THE COURT: You don't have to lean up into
7 it, Mr. Simpson. I don't think you can get-- don't
8 get too far away from it, but I think it'll pick
9 you up.

10 (Mr. Evans passed photographs S-42 and S-43 to
11 the jury.)

12 BY MR. EVANS:

13 Q. Did you have that car with you at work that day?

14 A. Yes, I did.

15 Q. Approximately what time did you go to work that
16 day?

17 A. About 6:15.

18 Q. Did you have any type of weapon in your vehicle
19 that day?

20 A. Yes, I did.

21 Q. What type of weapon was it?

22 A. I had a pistol.

23 Q. What type pistol, what caliber?

24 A. .380.

25 Q. Was that pistol an automatic or a revolver?

26 A. Automatic.

27 Q. All right, would you describe what the pistol
28 looked like and how the pistol worked?

29 A. It was black.

1 Q. Okay. Show us with your hands approximately what
2 size that pistol was?

3 A. (Witness indicates.)

4 Q. Okay, you are showing approximately--

5 A. --That is how long it was.

6 Q. --7 or 8 inches long?

7 A. Yeah, something like that. Yes, sir.

8 Q. Did this pistol have a revolver that bullets went
9 in, or did it have a clip--

10 A. --clip--

11 Q. --that went in the bottom of it?

12 A. It had a clip.

13 Q. Okay, did that pistol have bullets in it?

14 A. Yes, it did.

15 Q. Where was that pistol located in your car?

16 A. In my glove compartment.

17 Q. All right, when, if any time, did you notice that
18 something was wrong with your glove compartment?

19 A. When I got ready to go get lunch.

20 Q. All right. Now explain to the ladies and
21 gentlemen of the jury how this works. You went to work at
22 what time?

23 A. 6:15.

24 Q. All right, did you go to pick up your lunch or your
25 lunch and other people's lunches?

26 A. Other people's lunch.

27 Q. How many people's lunches were you picking up?

28 A. Well, I can't recall.

29 Q. Just best you can remember?

1 A. About eight or nine.

2 Q. Okay, and what time were you getting ready to go
3 pick their lunches up?

4 A. When I got off.

5 Q. What time was that?

6 A. I left, I get off at 10:30. It was about something
7 to 11:00 when I left.

8 Q. Something to 11:00?

9 A. Yes, sir.

10 Q. All right, from the time that you went to work that
11 morning at what time?

12 A. About 6:15.

13 Q. All right, from the time that you went to work at
14 6:15 until something before 11:00, and it may be hard to
15 pinpoint exactly, but can you give us an idea? Are we
16 talking about a quarter to 11:00, 20 minutes until 11:00,
17 ten--

18 A. --between, about, about a quarter till.

19 Q. Approximately 10:45?

20 A. Yeah, something like that.

21 Q. All right. Between 6:15 and 10:45 on the day of
22 the murders, did you go back to your car for anything?

23 A. Yes, I did.

24 Q. About what time?

25 A. I went back about 9:15 to get my breakfast out.

26 Q. Okay, was your glove box broken into at 9:15?

27 A. I didn't notice it.

28 Q. So you didn't look at it at that time?

29 A. No, sir.

1 Q. You didn't get in your vehicle and drive or
2 anything at that time?

3 A. No, sir.

4 Q. Where was your lunch located?

5 A. On the, sitting on the front seat.

6 Q. So you just opened your vehicle and got your lunch
7 out?

8 A. Yes, sir.

9 Q. Was your vehicle unlocked?

10 A. Yes, sir.

11 Q. Okay. You went back out there at 10:45. You
12 checked out of work at that time; is that correct?

13 A. No, no, I went back before then.

14 Q. Okay.

15 A. I went back and let the windows down.

16 Q. What time did you go let your windows down?

17 A. Right before I got ready to leave at 10:30.

18 Q. About 10:30 you went outside to let your--

19 A. --no, about 10:20, 25, something like that.

20 Q. Okay. Hard to say exactly?

21 A. Yes, sir.

22 Q. When you did that, did you have any cause to look
23 at your glove compartment when you let your window down?

24 A. No, sir.

25 Q. All right, when you got in your vehicle after you
26 checked out and were going to get your lunch, what did you
27 notice about your glove compartment?

28 A. When I got ready to close, when I closed the door,
29 it came open.

1 Q. Okay. Was that unusual?

2 A. No, sir.

3 Q. Okay, was there a pistol in it at that time?

4 A. No, sir.

5 Q. Your pistol was gone?

6 A. Yes, sir.

7 Q. And this was the .380 automatic that you have
8 described?

9 A. Yes, sir.

10 Q. Do you remember who the first person was that
11 morning that you told your gun was stolen?

12 A. Yes, sir.

13 Q. Who was that?

14 A. That's my brother.

15 Q. And what is your brother's name?

16 A. Emmitt.

17 Q. What did you say to Emmitt about your gun being
18 stolen?

19 A. I asked Emmitt did he see anybody around my car.

20 Q. Okay.

21 A. And they had two more peoples in there, and I asked
22 them too.

23 Q. Okay, about what time was this?

24 A. That was right before. That was right before I
25 went, that was right before I got ready to go pick up the
26 lunch.

27 Q. So somewhere around 10:45 you were already asking
28 different people at work if any of them saw who got your gun
29 or--

1 A. --yeah, anybody around my car; right.

2 Q. Where did you go from there?

3 A. I went to the chicken place.

4 Q. Now is that the place that was known as Fuzzy's
5 Fried Chicken?

6 A. Yes, sir.

7 Q. Where is that located in relationship to Angelica
8 where you were working? How far from Angelica's?

9 A. Oh, about, about a quarter of a mile, I guess,
10 something like that.

11 Q. Just right up the highway--

12 A. --around the corner--

13 Q. --and down the highway?

14 A. Yes, sir. Around the corner, yes, sir.

15 Q. Did you mention to anyone in there that your gun
16 was stolen?

17 A. Yes, sir.

18 Q. Who did you tell in there?

19 A. I told Clarence May, Dot Flowers.

20 Q. Okay, so you had told several people at that point
21 already that your gun was stolen?

22 A. Yes, sir.

23 Q. Do you know Curtis Flowers?

24 A. Yes, sir.

25 Q. How do you know him?

26 A. We, we-- he my nephew.

27 Q. He is your nephew?

28 A. Right.

29 Q. Did he know that you had a .380 automatic?

1 A. Yes, sir.

2 BY MR. LUMUMBA: Objection. Objection. There
3 is no foundation.

4 BY THE COURT: Well, he can testify to his own
5 personal knowledge that he knows.

6 BY MR. LUMUMBA: Can we approach?

7 BY THE COURT: Uh-hum.

8 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
9 THE JURY AS FOLLOWS:)

10 BY MR. LUMUMBA: Whether-- I think that I
11 didn't make this objection before, but I'm making
12 it now. What I am challenging is the foundation.
13 I mean how does he know? I mean that's the
14 question--

15 BY THE COURT: Well, of course, he doesn't
16 have to ask him. All he has got to do is ask him
17 if he knows. He could have seen-- he could, it
18 could have happened with Curtis being there with
19 him, seen-- there is all kind of ways. And you can
20 cross-examine him on that, but he can ask that
21 question that way. So the objection is overruled.

22 END BENCH CONFERENCE

23 BY MR. EVANS:

24 Q. All right, let me start back over on this line.
25 Did Curtis Flowers know that you had a .380 automatic?

26 A. Yes, sir.

27 Q. Approximately what time that day did you first tell
28 law enforcement officers that your gun was stolen?

29 A. I didn't tell them.

1 Q. All right, do you remember talking to Bill
2 Thornburg?

3 A. Yes, sir.

4 Q. What I am getting at is do you remember talking to
5 Bill Thornburg at Angelica's?

6 A. Yes, sir.

7 Q. Do you remember telling him about your gun being
8 stolen?

9 A. Yes, sir--

10 BY MR. LUMUMBA: --Objection, Judge. The
11 questions are leading.

12 BY MR. EVANS: Your Honor, I am just trying to
13 make him understand at what point I'm talking
14 about. I think he--

15 BY THE COURT: --I think those are preliminary
16 questions, but don't lead him, okay?

17 BY MR. EVANS: Okay, yes, sir.

18 BY MR. EVANS:

19 Q. What did you tell Officer Bill Thornburg about your
20 gun?

21 A. That I had a .380 and it had been missing.
22 Somebody had broke in the car.

23 Q. All right. Did you explain to Officer Thornburg
24 where the gun was?

25 A. Yes, sir.

26 Q. Did you explain to him about the glove box--

27 BY MR. LUMUMBA: --Excuse me, the questions
28 are leading. I object--

29 BY MR. EVANS: --All right, I will rephrase

1 the question.

2 BY MR. EVANS:

3 Q. As far as the inside of your car where the gun was
4 contained, what did you tell Officer Thornburg?

5 BY MR. LUMUMBA: Objection. It assumes he
6 told him anything. Why can't he just ask him what
7 he told Officer Thornburg if that's what he wants
8 to do. I object to the leading question.

9 BY THE COURT: Okay, that objection is
10 overruled as to that question.

11 BY MR. EVANS:

12 Q. You may answer the question if you remember what I
13 asked. Do you want me to rephrase-- do you want me to ask
14 you again?

15 A. What did I tell Mr. Thornburg?

16 Q. About the inside of your car.

17 A. I said somebody had broke in my pocket and stole my
18 gun.

19 Q. Okay. Where did you first tell the officers that
20 you got this gun from?

21 A. From my brother.

22 Q. Was that true?

23 A. No, sir. I lied.

24 Q. Why did you lie to the officers about where you had
25 gotten the gun from?

26 A. Because, because I, I, I lied because when
27 Katherine, when Katherine Snow had told me about somebody was
28 at my car that morning, the next day, and I told them, and
29 she said that it looked kind of like Curtis, and that's why I

1 lied.

2 Q. She told you it looked kind of like Curtis?

3 A. Yes, sir.

4 Q. Did she give you a physical description of the
5 person?

6 A. Yes, sir; she sho' did.

7 Q. The physical description that she gave you of the
8 person that she saw by your car, did that make you think of
9 anybody in particular?

10 A. Yes, sir.

11 Q. Who was that?

12 A. Curtis.

13 Q. So before you ever told the officers where your gun
14 came from--

15 BY MR. LUMUMBA: --Leading question.

16 Objection.

17 BY THE COURT: No, he is restating testimony.

18 BY MR. LUMUMBA: Well, that is objectionable
19 too.

20 BY THE COURT: No, I think he can do that. He
21 can frame his question that way.

22 BY MR. EVANS:

23 Q. If I can remember where I am now. Before you ever
24 told the officers the lie about where your gun came from, who
25 did you suspect had taken the gun out of your glove
26 compartment?

27 A. I really, I didn't know.

28 Q. Who did you suspect was the one that was standing
29 up beside your car?

1 A. Me?

2 Q. Yeah.

3 A. She said it was Curtis.

4 Q. Okay, were you ever asked anything by the officers
5 in relationship-- well, let me rephrase that. What, if
6 anything, did you ever do to help the officers recover any
7 projectiles that you had fired out of that gun before?

8 A. I took them out to my house.

9 Q. All right, and what did you do when you carried the
10 officers out to your house?

11 A. They asked me have I been shooting the gun. I told
12 them yes.

13 Q. All right, is this behind your mother's house?

14 A. Yes, sir.

15 Q. What did you show the officers when you got to your
16 mother's house?

17 A. I showed them where we, where I was shooting at.

18 Q. All right, what had you been using as a target to
19 shoot at there?

20 A. At a big post out there.

21 Q. Can you describe the post for the ladies and
22 gentlemen of the jury?

23 A. It's a big cross tie where we used to hang our hogs
24 on. We shoots in that. We shoots down behind the house.

25 Q. And who had shot that .380 automatic that was taken
26 out of your car into the post that you carried the officers
27 to?

28 A. Me and my brother and them.

29 Q. Okay. Were you present when Officer Thornburg and

1 some other officers dug two projectiles out of that post?

2 A. Yes, sir; I was.

3 Q. And was that the same post that you had shot that
4 gun into?

5 A. Yes, sir.

6 BY MR. EVANS: May I have the Court's
7 indulgence for just one second.

8 (State's Counsel confer briefly.)

9 BY MR. EVANS:

10 Q. Mr. Simpson, do you see Curtis Flowers, the person
11 you have described as your nephew, in this courtroom today?

12 A. Yes, sir.

13 Q. Would you point to him and identify him, please?

14 A. Right there.

15 BY MR. EVANS: May the record reflect that he
16 has identified the Defendant in this cause.

17 BY THE COURT: Let the record reflect that.

18 BY MR. EVANS:

19 Q. As of the date of the murders at Tardy Furniture,
20 do you know where Curtis was living?

21 A. With his mom.

22 Q. And do you know--

23 A. --No, no, no, no. With his girlfriend.

24 Q. Who was his girlfriend?

25 A. Connie May.

26 Q. Connie Moore?

27 A. Connie Moore.

28 Q. And that's where he was living?

29 A. Yes, sir.

1 BY MR. EVANS: Tender the witness. Wait one--
2 just a second.

3 (State's Counsel confer briefly.)

4 BY MR. EVANS:

5 Q. All right, just to try to pin down all the times,
6 Mr. Simpson, do you know about what time after you went to
7 Fuzzy's Fried Chicken and picked up the lunches, you got back
8 to Angelica with the lunches?

9 A. I went to two places that day.

10 Q. All right, where all did you go?

11 A. I went to Fuzzy's, and then I went to City Cafe.

12 Q. Did you go to both of those places picking up
13 lunches?

14 A. Yes, sir.

15 Q. Where is City Cafe?

16 A. That's up on Applegate, 51.

17 Q. Okay, Applegate and 51 are the same thing?

18 A. On Applegate.

19 Q. Approximately how long did it take you-- if I
20 understand right, you have testified that you left around
21 10:45 to go get the lunches. Approximately how long did it
22 take you to go to Fuzzy's and the City Cafe and get back?

23 A. It was about something to 12:00, I think.

24 Q. Something to 12:00?

25 A. I think I remember. Something to 12:00.

26 Q. And I'm not trying to be exact, but as close as you
27 can pin it down, about how much to 12:00?

28 A. About, right before lunch, about a quarter till,
29 something like that. Between 11:30 and 12:00.

1 Q. Okay. Thank you.

2 BY MR. EVANS: That's all, Your Honor.

3 BY MR. LUMUMBA: May I proceed, Judge?

4 BY THE COURT: Yes.

5 CROSS-EXAMINATION BY MR. LUMUMBA:

6 Q. Good afternoon, Mr. Simpson. How are you doing?

7 A. All right.

8 Q. Mr. Simpson, now if I heard you correctly, you said
9 that you talked to Ms. Snow the next day?

10 A. Yes, sir.

11 Q. And she told you-- is that what you told us?

12 A. Yes, sir.

13 Q. So if she said that she didn't talk to you for
14 several days because you weren't there the next day, then she
15 wouldn't be telling the truth; right?

16 A. She talked to me the next day.

17 Q. Okay. Now also I think you said that she told you
18 that Curtis was out there. She said Curtis?

19 A. Well, she said she didn't know his name.

20 Q. Oh, okay. She didn't say Curtis but she said she
21 didn't know his name?

22 A. She said, you know, the next day.

23 Q. Pardon?

24 A. She said she know, she said, she described him, and
25 it looked like Curtis.

26 Q. Oh, okay. She described him and you thought it
27 looked like Curtis; right?

28 A. Right.

29 Q. Okay, well, let's see how she described him. Did

1 she describe him by saying he had short pants on and a white
2 cap?

3 A. Yes, sir.

4 Q. Oh, okay. And that he was built short?

5 A. No, but he is medium size.

6 Q. Okay. And had short pants on?

7 A. Yes, sir.

8 Q. And a white T-shirt and a cap?

9 A. Yes, sir.

10 Q. And just to look at your testimony back a while ago
11 on page 666, right here you said that he said he was built
12 short. Is that what that says?

13 A. I said she said that?

14 Q. Yeah, isn't that what you said?

15 A. I said he was built. He was built.

16 Q. Okay--

17 A. --whether short or medium or whatever.

18 Q. Well, let me see what you said. You said, you were
19 asked the question. "How do you know she was talking about
20 Curtis?" The answer you gave is, "Because she said he
21 was,"-- listen to this. Read this, okay, because this is
22 what this says. "And how did you know she was talking about
23 Curtis?" "Because she said he was short pants on and had a
24 white cap and he was built short."

25 A. Yes, sir.

26 Q. Now that's what you say here back at this last
27 hearing; right?

28 A. Yes, sir.

29 Q. Okay, and Ms. Snow seemed to me to be kind of short

1 herself; isn't that right?

2 A. Yes, sir.

3 Q. So I don't-- she wouldn't be calling a man that is
4 5 foot 10 short, would she?

5 A. Well, you know, I can't, I couldn't really tell
6 you.

7 Q. But anyway, she told you about these pants he had
8 on and this cap he had on; right?

9 A. Yes, sir.

10 Q. Okay. And that is how you know it was him?

11 A. No, I didn't say -- well, that's how I describe
12 him.

13 Q. All right. Now you, you said that you lied about
14 where the gun came from; right?

15 A. I did.

16 Q. Okay. And the gun came from a guy named Ike
17 Williams; right?

18 A. Right.

19 Q. Ike Williams is not Curtis Flowers; right?

20 A. Right.

21 Q. So if you would have said the gun come from Ike
22 Williams, there is no way that the fact that the gun come
23 from Ike Williams is going to hurt Curtis Flowers, is it?
24 Curtis didn't give you the gun, did he?

25 A. No, sir. He sho' didn't.

26 Q. Ike is your friend; right?

27 A. Right.

28 Q. He is not Curtis' friend, is he?

29 A. He Curtis' friend too.

1 Q. Well, that is not Curtis. Ike is not Curtis;
2 right?

3 A. No.

4 Q. So Ike knew you had the gun too; right?

5 A. Yes, sir.

6 Q. Okay, and several of your people that you knew knew
7 you had the gun; is that right?

8 A. Yes, sir.

9 Q. And in fact, people break in people's cars; they
10 don't sometimes know what they got, do they?

11 A. No, sir.

12 Q. In fact, what you said at the last hearing is that
13 you didn't even have the gun in the car at first. You had it
14 in your mother's house; right?

15 A. No. I did not. I said I had it--

16 Q. You said that you put the gun in the vehicle the
17 night before at your mother's house?

18 A. Right. Right.

19 Q. That's what you said?

20 A. Right.

21 Q. So it was in your mother's house?

22 A. It was in my mother's house, and I put it in the
23 car that night before, that night.

24 Q. I see. So the gun had been in your mother's house;
25 right?

26 A. Yes.

27 Q. And you put it in the car the night before; right?

28 A. To go get it cleaned.

29 Q. I see; okay, whatever. And so you didn't look in

1 the glove compartment, at least according to what you told
2 the police?

3 A. Yes, sir. Yes, sir.

4 Q. Okay, you didn't even look in the glove compartment
5 between about 9:15 the night before until the day that you
6 now say that you discovered your gun stolen; isn't that
7 right?

8 A. I knew it was in there.

9 Q. That is not my question. Didn't you say at the
10 last hearing that you did not even look in the glove
11 compartment prior, between the time you put the thing in the
12 glove compartment at your mother's house and between the time
13 that you say you were going out there to get the lunch the
14 next day; isn't that right?

15 A. No. I didn't look in it.

16 Q. And the car was open; right?

17 A. Oh, yes. It was open.

18 Q. So you didn't see Curtis break into the car, did
19 you?

20 A. No, sir.

21 Q. And Mrs., and Ms. Snow didn't tell you Curtis
22 Flowers broke in your car. She didn't say Curtis' name, say
23 he broke in your car. She didn't say that, did she?

24 A. She described him.

25 Q. Do you hear my question?

26 A. No, sir. She didn't say it; no, sir.

27 Q. No. And you say she described him; right?

28 A. Right.

29 Q. You say she described him by saying he had a white

1 cap on?

2 A. White cap.

3 Q. And she described him, she described him by saying
4 he had white shorts on?

5 A. No.

6 Q. That, isn't that what you just said?

7 A. He had a white cap, white T-shirt and blue shorts.

8 Q. Okay. So he had short pants on; right?

9 A. Right.

10 Q. And she said that he had a T-shirt and a cap on; is
11 that right?

12 A. Right.

13 Q. Now if she just said to us a little while ago that
14 she never told you that, would she be lying?

15 BY MR. HORAN: Objection, Your Honor.

16 BY THE COURT: You can't pit one against the
17 other.

18 BY MR. LUMUMBA:

19 Q. Now what you do know is that the police were asking
20 you questions; right?

21 A. Yes, sir.

22 Q. And they were asking you questions, **you** questions
23 about Tardy's; isn't that right? They were asking you
24 questions about the gun and about the incident; isn't that
25 correct?

26 A. Yes, sir.

27 Q. And so you were being asked questions by the
28 police; right?

29 A. Yes, sir.

1 Q. And you lied to the police. You know that too;
2 right?

3 A. Yes, sir.

4 Q. And you were saying that you told-- you wanted to
5 tell the jury that you didn't say that Ike had given you the
6 gun, and that was what I heard you say. You didn't want to
7 say that Ike had given you the gun because you knew it was
8 Curtis that was by your car; right?

9 A. No, I didn't say that.

10 Q. Oh, you didn't? Well, just let me ask you this
11 question. Actually Curtis' lawyer came to you and asked you
12 if he could discuss the case with you to find out what you
13 knew; is that right? This gentleman over here, Mr. Freelon.

14 A. Yes, sir.

15 Q. And you know, from no other reason because of your
16 experience in looking at TV and everything that lawyers
17 investigate cases for their clients; right?

18 A. Yes, sir.

19 Q. And the way that they can work is that they talk to
20 people and ask the people what happened so they can get the
21 real information; right?

22 BY MR. EVANS: Your Honor, I object. What
23 lawyers do has nothing to do with this. If he
24 wants to ask him questions, he can, but what
25 lawyers do on cases is not a proper question for
26 this witness.

27 BY MR. LUMUMBA: This is preliminary, Judge.

28 BY THE COURT: And I think I know where you
29 are going, but let's get to it.

1 BY MR. LUMUMBA: Okay.

2 BY MR. LUMUMBA:

3 Q. You know that; right?

4 A. Repeat that.

5 Q. You know that lawyers investigate cases in order to
6 help their clients; right?

7 A. Yeah.

8 Q. And you knew that this lawyer was representing
9 Curtis; right?

10 A. Yes, sir, after he told me.

11 Q. And the lawyer asked you if you would talk to him
12 and tell him what you knew, and you said no; right?

13 A. Right.

14 Q. You are the guy that was trying to help Curtis;
15 right?

16 A. Help Curtis?

17 Q. You don't ever lock your car, do you?

18 A. No, sir. I lock my pocket.

19 Q. Now let me see if I understand this correctly. On
20 that particular day you went out the first time around about,
21 well, I don't know whether you went out the first time, but
22 anyway you say you went out one time about 9:00 or 9:15; is
23 that right?

24 A. Yes, sir.

25 Q. And you didn't see a glove compartment at that time
26 busted into; is that right?

27 A. No, sir.

28 Q. Now the second time you went out, if I understand
29 you correctly, was around about 10:20; right?

1 A. 10:20-25. Right.

2 Q. And if I understand, and you didn't see a glove
3 compartment busted in?

4 A. No. No, sir.

5 Q. And in fact, if I'm not mistaken, you testified
6 before-- and both of those times you opened the door and
7 closed the door; right, because one time you had to get your
8 breakfast out; right?

9 A. Right.

10 Q. And you have got to close the door; right?

11 A. Well, I just closed the door.

12 Q. Right.

13 A. Went on back in the plant.

14 Q. All right. Now the other thing that I think that
15 you shared with us is that, or shared before, is that the
16 reason that you say you went out at 10:20 or 10:25 is to roll
17 your windows down; right?

18 A. Let the windows down, power windows.

19 Q. Okay, you have power so you were letting them down?

20 A. Yes, sir.

21 Q. Which means that your windows were up before;
22 right?

23 A. Yes.

24 Q. So they would have been up between, between the
25 time--

26 A. --time I got to work--

27 Q. --you got there and the time you let them down?

28 A. Yes, sir.

29 Q. So they would have been up between 7:00 and 7:30?

1 A. Oh, yes, sir.

2 Q. So if anybody was out there in the parking lot
3 looking at your car and looking at somebody leaning on your
4 car at 7:00 or 7:30, your windows on your car would have been
5 up; is that right?

6 A. Right.

7 Q. After the police talked to you the first day, they
8 talked to you at least two or three times after that; isn't
9 that correct?

10 A. Yes, sir.

11 Q. Well, one thing they never did on the day that they
12 first talked to you, they never gave you any kind of test to
13 determine whether you had shot a gun that day, did they, or
14 to determine whether you had actually-- strike that. To
15 determine whether you had come in contact with a gun or
16 anything like that; is that correct?

17 A. That's right.

18 Q. I'm sorry?

19 A. Yes, sir.

20 Q. Or whether you had come in contact with anybody
21 else that had come in contact with a gun; right?

22 A. Right.

23 Q. Or whether you picked up any kind of particles off
24 of a furniture anywhere else that might have come from a gun;
25 right?

26 A. Right.

27 Q. Now one thing you know that a lot of people in
28 your, a lot of people that you know hunt; is that correct?

29 A. Yes, sir.

1 Q. A lot of people in Curtis' family, they hunt;
2 right?

3 A. Yes, sir.

4 Q. They have rifles and shotguns, and they hunt all
5 the time, don't they?

6 A. Yes, sir. I guess.

7 Q. All right, sometimes they do a little shooting of
8 guns when it ain't hunting season; right?

9 A. Oh, yes, sir.

10 BY MR. EVANS: Your Honor, I object to other
11 people unless he ties in some relevancy. It
12 doesn't matter if the whole world hunts unless he
13 can tie it to this particular case.

14 BY THE COURT: Well, he is on cross-
15 examination. Go ahead.

16 BY MR. LUMUMBA:

17 Q. And Curtis associates with those people all the
18 time; right?

19 A. Yeah, that is his family.

20 Q. Yeah, he goes into their houses; right?

21 A. Family, right.

22 Q. Handles their, handles things in their house;
23 right?

24 A. I guess so. Yes, sir.

25 BY MR. LUMUMBA: Excuse me, Judge, one second,
26 please.

27 (Defense Counsel confer briefly.)

28 Q. Now Mr. Simpson, they keep records at your job when
29 you work and when you don't work; right?

1 A. Yeah, they supposed to. Yes, sir.

2 Q. Okay, and wouldn't it be true that after you
3 clocked out on 7/16, that is July 16, 1996, the day that we
4 have been talking about; you understand that?

5 A. Yeah, the first day of the murder?

6 Q. Yeah, the day the people died in Tardy's?

7 A. Oh, okay.

8 Q. Wouldn't it be true that after that day, you did
9 not work for at least four days in a row?

10 A. I got suspended.

11 Q. So you weren't even there for the next four days?

12 A. I came the day-- I came to work that morning, and
13 so they sent, they sent me back home that morning. I came to
14 work that morning.

15 Q. I see, but you didn't work from 7/17 to 7/20?

16 A. Yeah, because they let me work that morning, and
17 they sent me back home because I started work. I get there
18 before the supervisor do.

19 (Mr. Lumumba shows document to Counsel
20 opposite, and they confer out of the hearing of the Court
21 Reporter until the following:)

22 BY MR. LUMUMBA: Do you have any problem with
23 this?

24 BY MR. EVANS: Yeah, that is not a time card.
25 He can testify when he worked.

26 (Counsel confer further out of the hearing of
27 the Court Reporter.)

28 BY MR. LUMUMBA: May we have this marked,
29 please.

1 (SHEET SHOWING DATES WORKED BY DOYLE SIMPSON
2 WAS MARKED AS DEFENDANT'S EXHIBIT D-14 FOR
3 IDENTIFICATION.)

4 BY MR. EVANS: We don't object to that one.

5 (NOTE: Referring to another document that
6 will be marked later.)

7 BY MR. LUMUMBA:

8 Q. I am showing you Exhibit D-14. It's for
9 identification purposes. They do keep a record down there of
10 what days you work and what days you don't work; right?

11 BY MR. HORAN: Your Honor, we object to this
12 particular unless he can identify that as an
13 official document. That is just something typed on
14 a paper.

15 BY THE COURT: I understand that, but that is
16 just what he asked him, if he could identify it.

17 BY MR. LUMUMBA: You, well--

18 BY THE COURT: If he can identify it, he can
19 identify it.

20 BY MR. HORAN: That's right.

21 BY THE COURT: Do you understand the question,
22 Mr. Simpson?

23 BY THE WITNESS: What's that? Will you repeat
24 it?

25 BY THE COURT: I believe you better ask him
26 again, Mr. Lumumba.

27 BY MR. LUMUMBA:

28 Q. You recognize that as being a record of the days
29 you worked down there at your job; is that right?

1 A. Yes, sir.

2 Q. And it indicates there when you worked and when you
3 didn't work; right?

4 A. Yes, sir.

5 Q. And it indicates there that you worked on which
6 dates?

7 A. 15 and 16th.

8 Q. And does it say anything in there about you working
9 after the 16th?

10 A. No, sir.

11 Q. What does it say?

12 A. I was, I was-- they dismissed me for having--

13 Q. Well, at least for four days; right?

14 A. Yeah, they dismissed me.

15 BY MR. LUMUMBA: I move the admission of this
16 document here.

17 BY MR. EVANS: Which document is it?

18 BY MR. LUMUMBA: I am moving the admission of
19 D-14, the one he just testified from.

20 BY MR. EVANS: Your Honor, I would like to
21 voir dire him on this one if I may.

22 BY THE COURT: Okay.

23 VOIR DIRE EXAMINATION BY MR. EVANS:

24 Q. Mr. Simpson.

25 A. Yes, sir.

26 Q. This document, this piece of paper that you have
27 been handed, does it explain the fact that you came in to
28 work on the 17th--

29 BY MR. LUMUMBA: --Just--

1 Q. --and worked for a while before you were asked to
2 go home?

3 A. Yes, sir.

4 BY MR. LUMUMBA: Objection, Judge.

5 BY MR. EVANS: On what basis?

6 BY MR. LUMUMBA: The objection is that he is
7 supposed to be voir dired on the document, whether
8 he knows what the document is, whether it's a
9 legitimate document, not what the document says.
10 That is not what he is supposed to be voir dired
11 on. It's just on the admissibility of the
12 document.

13 BY THE COURT: It is; that is true.

14 BY MR. EVANS:

15 Q. Mr. Simpson, is that any kind of official document
16 from Angelica, or is that some--

17 A. --I don't know where it from--

18 Q. --things typed on a piece of paper?

19 A. That is something on a piece of paper.

20 BY MR. EVANS: I object to this document
21 because it does not show the records at that time.

22 BY MR. LUMUMBA: What I-- that definitely does
23 show the records at the time, but secondly, what I
24 would say here, Judge, is I am objecting to the
25 question was leading, trying to tell the witness
26 what to say. If Angelica comes in here, they will
27 tell you that that is a record that they gave to us
28 as to when he worked and when he didn't work.

29 BY THE COURT: Well, they can do that, and

1 then it might be admissible. Until that time it's
2 not, obviously on its face, it's not a business
3 record, and it is nothing for me to know that it's
4 an official record of when he worked. You can ask
5 him questions about it, and he can testify to it.
6 But as far as this document is concerned, it's not
7 admissible in the state of the evidence now. So
8 that objection is sustained at this point.

9 (COPY OF TIME SHEET ON DOYLE SIMPSON WAS
10 MARKED AS DEFENDANT'S EXHIBIT D-15 FOR
11 IDENTIFICATION.)

12 CONTINUED CROSS-EXAMINATION BY MR. LUMUMBA:

13 Q. D-15 for identification purposes. You recognize
14 that?

15 A. (Pause while witness looks at document.) What is
16 this?

17 Q. Do you keep a time card?

18 A. No, sir. I sure don't.

19 Q. You don't have a time card at Angelica?

20 A. No, I do not.

21 Q. You don't punch in and punch out?

22 A. Yeah, I punch in and punch out, but not no time
23 card.

24 Q. What do you punch in and punch out on?

25 A. I punch out with a sheet.

26 Q. Does that look like the sheet that you punch in and
27 punch out on?

28 A. No, sir. My name, my name do not be on it.

29 Q. So you punch out on a sheet that has somebody

1 else's name on it then?

2 A. No, sir. I just punch-- when I punch it in, I just
3 take it to the office.

4 Q. Right. So by the way, you have already told me
5 that you were suspended for four days; is that correct?

6 A. It was three days, three or four days. I kept a
7 card.

8 Q. Right after this incident?

9 A. Yeah, right after.

10 Q. Let me ask you this.

11 BY THE COURT: Let me ask him one thing too.
12 I may have misunderstood, but didn't y'all agree to
13 the admission of this document?

14 BY MR. EVANS: Yes, sir.

15 BY THE COURT: Well, let's--

16 BY MR. LUMUMBA: --Okay, it's admitted.

17 BY MR. HORAN: I don't think he has any
18 knowledge of that document, Your Honor, but it's--

19 BY THE COURT: --Y'all have got no objection
20 to it being admitted?

21 BY MR. EVANS: We have no objection to it even
22 though he doesn't, probably doesn't even know what
23 it is. We don't object to it.

24 BY THE COURT: Okay. Then let it be marked
25 and entered.

26 (COPY OF TIME SHEET ON DOYLE SIMPSON
27 PREVIOUSLY MARKED AS DEFENDANT'S EXHIBIT D-15 FOR
28 IDENTIFICATION WAS NOW ADMITTED IN EVIDENCE.)

29 BY MR. LUMUMBA:

1 Q. By the way, you didn't clock out when you left out
2 at 9:15, did you? When you left out of--

3 A. --Oh, no, uh-uh. I didn't clock. I just walked to
4 the car, walked to my car in the parking lot.

5 Q. But in any event you didn't clock out?

6 A. (Witness shakes his head.)

7 Q. And you didn't clock out when you left at about 10
8 something, did you?

9 A. No. I clocked out when the time, you know, at
10 10:30.

11 Q. What you do is you clock in when you come--

12 A. --I don't clock out no more until I get ready to
13 leave.

14 Q. Okay, and you leave normally at 10:30; is that
15 right?

16 A. 10:30, right.

17 Q. That is normally when you leave. And that is the
18 only two times that you really clock out; right?

19 A. In the morning and when I leave.

20 Q. That is not only true of you; that is true of
21 everybody else what works there; is that right, is that they
22 don't--

23 A. --No, no, not everybody.

24 Q. I'm not talking about the time that you worked.
25 Listen to my question. The fact that they don't clock out,
26 doesn't anybody ever clock out for breakfast or lunch, do
27 they?

28 A. Not for breaks, at break time.

29 Q. Okay, they don't break-- they don't clock out?

1 A. They don't clock out for breaks.

2 (Defense Counsel confer briefly.)

3 BY MR. LUMUMBA: I have no further questions
4 of this witness, Judge.

5 REDIRECT EXAMINATION BY MR. EVANS:

6 Q. Mr. Simpson, did you consider yourself trying to
7 help the officers or trying to conceal evidence from them?

8 A. Trying to help them.

9 Q. Did anybody make you take the officers to where you
10 had test fired that gun, where you had target practiced with
11 it?

12 A. No, sir.

13 Q. Nobody tried to force you to do that?

14 A. I did it on my own.

15 Q. And the officers would have never been able to
16 compare the bullets that were known to be fired from your gun
17 to the store if it hadn't been for your help, would they?

18 BY MR. LUMUMBA: Objection. First of all, it
19 is leading, and second of all, it asks the witness
20 to respond to a question--

21 BY MR. EVANS: --I will rephrase.

22 BY MR. LUMUMBA: --that could possibly be--

23 **BY THE COURT:** --It is leading.

24 BY MR. EVANS: I will rephrase the question.

25 BY MR. EVANS:

26 Q. Would the officers have had any way of finding the
27 bullets that you had test fired or shot from your gun if you
28 had not carried them to it?

29 BY MR. LUMUMBA: Objection. How does he know

1 that?

2 **BY THE COURT:** Well, he is entitled to give
3 that opinion. That is a lay opinion.

4 **BY THE WITNESS:**

5 A. They wouldn't have knowed it.

6 **BY MR. EVANS:** No further questions, Your
7 Honor.

8 **BY THE COURT:** Is he finally excused?

9 **BY MR. EVANS:** One second.

10 (State's Counsel confer briefly.)

11 **BY MR. EVANS:** Yes, sir, as far as the State.

12 **BY MR. LUMUMBA:** We don't need him. Yes, sir,
13 Judge.

14 **BY THE COURT:** Okay, Mr. Simpson, you are free
15 to go.

16 WITNESS EXCUSED.

17 **BY THE COURT:** Who do you have next?

18 **BY MR. EVANS:** Give us a second, Your Honor.

19 **BY MR. HORAN:** We need to see if some experts
20 are here, Judge. Is that okay?

21 **BY MR. EVANS:** We are trying to figure out--
22 we have got a couple of experts that may be--

23 **BY THE COURT:** -- Okay, well, I know the jury
24 will appreciate that. How about 10 minutes?

25 (FOLLOWING THE SECOND AFTERNOON RECESS ON
26 MARCH 25, 1999, THE TRIAL CONTINUED IN OPEN COURT
27 WITH THE COURT, ALL COUNSEL, AND THE DEFENDANT
28 PRESENT:)

29 **BY THE COURT:** Okay, I'm ready for the jury.

1 Who do you have next, Mr. Horan?

2 BY MR. HORAN: Hold on just a minute, Judge.

3 BY MR. EVANS: Clemmie Fleming, Judge.

4 BY THE COURT: Okay.

5 JURY ENTERS THE COURTROOM.

6 BY THE COURT: Who did you say?

7 BY MR. EVANS: Clemmie Fleming. I believe
8 they have already gone after her.

9 BY THE COURT: Ms. Fleming, have you been
10 sworn?

11 BY THE WITNESS: No.

12 BY THE COURT: Would you raise your right
13 hand.

14 CLEMMIE FLEMING,

15 a black female called to testify as a witness by the State of
16 Mississippi, having first been duly sworn, testified as
17 follows, to-wit:

18 BY THE COURT: Have a seat, there.

19 BY MR. EVANS: May I proceed?

20 BY THE COURT: Yes, sir.

21 DIRECT EXAMINATION BY MR. EVANS:

22 Q. Ms. Fleming, where do you live?

23 A. In Winona.

24 Q. And have you lived in Winona most of your life?

25 A. All my life.

26 BY THE COURT: You need to speak up, Ms.
27 Fleming.

28 BY MR. EVANS:

29 Q. Ms. Fleming, I want to direct your attention

1 specifically to the day of the murders at Tardy Furniture in
2 Winona. Do you remember that day?

3 A. Yes.

4 Q. Now the Court Reporter has got to take down
5 everything, so be sure and speak out so she can hear you;
6 okay?

7 A. (Witness nods her head.)

8 Q. All right, Ms. Fleming, did you have an occasion to
9 go down by Tardy Furniture on the day of the killings?

10 A. Yes, sir.

11 Q. Approximately what time did you go down in front of
12 Tardy Furniture?

13 A. Around 10 o'clock.

14 Q. Were you by yourself or with someone?

15 A. With Roy Harris.

16 Q. All right, Roy Harris was driving you?

17 A. Yes, sir.

18 Q. Why did you go down to Tardy Furniture?

19 A. Because I owed on a bill.

20 Q. Okay, pull the mike just a little bit closer to
21 you. You are soft spoken, and it doesn't pick up real good.
22 Did you actually go in Tardy Furniture?

23 A. No, sir.

24 Q. Why did you not go in Tardy Furniture?

25 A. I didn't feel like it.

26 Q. Okay, would you explain your condition at that time
27 to the ladies and gentlemen of the jury so they will know why
28 you didn't feel like it?

29 A. I was pregnant.

1 Q. Okay. When y'all went down in front of Tardy
2 Furniture, which direction were you going?

3 A. We went down toward Carrollton-- we was going, we
4 went down towards Carrollton Avenue.

5 Q. Okay, were you in front of Tardy Furniture or
6 beside, behind or where?

7 A. We went down on the side of Tardy's.

8 Q. Okay. When you were leaving Tardy Furniture, did
9 you see anyone?

10 A. Curtis Flowers.

11 Q. You saw Curtis Flowers?

12 A. Uh-hum.

13 Q. Do you know Curtis Flowers?

14 A. Yes.

15 Q. Do you see him in the courtroom?

16 A. Right there.

17 BY MR. EVANS: May the record reflect that she
18 has identified the Defendant, Curtis Flowers?

19 BY THE COURT: Let the record reflect that.

20 BY MR. EVANS:

21 Q. As of the day of the murders at Tardy Furniture,
22 how long had you known Curtis Flowers?

23 A. Every since I was old enough to know.

24 Q. Every since you was old enough to know?

25 A. (Witness nods her head.)

26 Q. What was Curtis Flowers doing when you left Tardy
27 Furniture with Roy Harris?

28 A. Running.

29 Q. Running? How was he running?

1 A. Like somebody was after him.

2 Q. And where was this Defendant running like somebody
3 was after him?

4 A. I don't know where he was running.

5 Q. Now I'm not asking you where he was running to.
6 Where did you see him running?

7 A. On Carrollton Avenue.

8 Q. In relationship to Tardy Furniture, where was he
9 when you saw him running?

10 A. 92 feet away from the building.

11 Q. How many feet?

12 A. 92 feet away from the building.

13 Q. Have you gone back with someone that measured it?

14 A. Yes, sir.

15 Q. And you pointed out where you saw him when you
16 first saw him running?

17 A. Yes, sir.

18 BY MR. LUMUMBA: Judge, these are all leading
19 questions. I object.

20 BY THE COURT: It's leading, but I'm going to
21 allow it. Go ahead.

22 BY MR. EVANS:

23 Q. When you saw the Defendant Curtis Flowers running,
24 was he running toward or away from Tardy Furniture?

25 A. He was running away from it.

26 Q. He was running away from Tardy Furniture?

27 A. Yes, sir.

28 Q. And this was about what time?

29 A. 10 o'clock.

1 BY MR. EVANS: One moment, Your Honor.

2 (State's Counsel confer briefly.)

3 BY MR. EVANS:

4 Q. Ms. Fleming, I show you Exhibit D-11 and ask you to
5 look at this photograph. Can you tell what that photograph
6 shows?

7 A. A car in the road.

8 Q. No, I'm talking about the whole photograph, the
9 buildings and all.

10 A. The dry cleaning.

11 Q. Okay, is that Hunger's Dry Cleaners that is next to
12 Tardy Furniture?

13 A. Yes, sir.

14 Q. All right. Is that the same street in that
15 photograph that you saw the Defendant running down?

16 BY MR. LUMUMBA: Objection, Judge--

17 BY THE WITNESS:

18 A. --Yes, sir.

19 BY MR. LUMUMBA: --The questions are leading.

20 BY THE COURT: Okay, that is leading now.

21 BY MR. EVANS:

22 Q. Do you see the street on that photograph that you
23 saw the Defendant running down?

24 A. Yes, sir.

25 Q. Would you step down and point out to the ladies and
26 gentlemen of the jury approximately where you saw the
27 Defendant running on that photograph.

28 BY MR. EVANS: May the witness step down, Your
29 Honor?

1 **BY THE COURT:** Yes.

2 BY MR. EVANS:

3 Q. If you would, I would like for you to hold the
4 picture up, and as you show the jury, walk down so that
5 everybody can see. Point to the approximate place on that
6 photograph that you saw him running.

7 A. Right here. (Witness points while standing in
8 front of the jury.)

9 Q. Okay, give me just a second. You can just stand
10 there for just a second. I would like for you to take this
11 marker and put an "X" in the approximate place that you saw
12 the Defendant Curtis Flowers running.

13 A. (Witness marks on photograph.)

14 Q. Okay. You may take your seat.

15 (Photographs shown to Defense Counsel.
16 Exhibit D-11 was passed to the jury.)

17 A. (Witness resumes witness stand.)

18 Q. Ms. Fleming, after the saw the Defendant Curtis
19 Flowers running away from Tardy's, which direction did you
20 and Roy Harris go?

21 A. We went up to, um, up Church Street and down Powell
22 Street.

23 Q. Okay, and did you, did you see the Defendant at any
24 other time after that?

25 A. Like we was at Jeff's store, and he was like fixing
26 to coming across the street.

27 Q. All right, would you describe to the ladies and
28 gentlemen of the jury where Jeff's store is?

29 A. On 51.

1 Q. Okay, on 51? And how long a period of time after
2 you saw him running from the store, did you see him up there
3 about Jeff's store?

4 A. It was pretty quick. I don't know.

5 Q. As close as you can estimate. It doesn't have to
6 be exact.

7 A. Like 5 minutes.

8 Q. Okay. When he was running, how was he running?
9 And by that what I mean was it a slow run? Was it a jog?
10 Was it running wide open? How was he running?

11 A. He was running wide open.

12 BY MR. EVANS: No further questions.

13 BY MR. LUMUMBA: May I proceed, Judge?

14 BY THE COURT: Yes, sir.

15 CROSS-EXAMINATION BY MR. LUMUMBA:

16 Q. Good afternoon, Ms. Fleming.

17 A. Good afternoon.

18 Q. Ms. Fleming, I believe isn't it true that you--
19 well, first of all, let me ask you this. Do you know a
20 person by the name of Stacey Wright?

21 A. Yes, I do.

22 Q. And actually Stacey Wright is a friend of yours,
23 isn't she?

24 A. Yes, not real close friend, but yeah.

25 Q. And didn't you tell Stacey Wright that you had just
26 told that story to the police about Curtis because you
27 thought that you either might get some reward money or that
28 you might get, they might not make you pay for your
29 furniture?

1 A. No.

2 Q. Okay, I see. But now you do owe, you did owe
3 Tardy's some furniture money, didn't you?

4 A. My brother supposed to have been paying it off.

5 Q. Well, now let me, let's take this one step at a
6 time. You owe for the furniture, for the--

7 A. --uh-huh, and my co-signer was going to pay it off.

8 Q. But you owed the money; right?

9 A. Uh-hum.

10 Q. And you haven't paid it?

11 A. Uh-uh.

12 Q. And in fact, have you paid them yet?

13 A. Uh-uh. My brother supposed to have been paying. I
14 don't know if he paid.

15 Q. My question is have you paid it yet?

16 A. Uh-uh.

17 Q. Now if I understand what you have just told this
18 jury correctly, at the time you did live near a guy by the
19 name of Roy Harris; is that correct?

20 A. Yes.

21 Q. And also he has a girlfriend that he lives with by
22 the name of Bingham; is that right?

23 A. Yes, sir.

24 Q. What is her first name?

25 A. Belinda.

26 Q. Belinda Bingham; is that correct?

27 A. Yes, sir.

28 Q. And if I understand correctly, that they live like
29 outside of town; right?

1 A. They do now.

2 Q. Well, they lived outside-- okay, and so it was a
3 good little ways that you had to drive to get to Tardy's; is
4 that right?

5 A. Yeah.

6 Q. And the people that called you either that day or
7 the day before, and they had told you-- in fact, it may have
8 been that day. They called you and told you you had to get
9 down there and pay on that furniture or they--

10 BY MR. HORAN: --Your Honor, that is
11 objectionable.

12 BY THE WITNESS: --It was--

13 BY MR. HORAN: --that is hearsay--

14 BY THE COURT: --Wait, wait.

15 BY MR. HORAN: Objection. It is hearsay.

16 BY MR. LUMUMBA: It is not offered for the
17 truth of the matter asserted therein, Judge. It is
18 offered to show her motivation of activities.

19 BY MR. EVANS: The fact that she owed a bill?

20 BY THE COURT: Well, I mean the hearsay for
21 that, that would have to come from the witness
22 stand. What he is objecting to is what you said;
23 is that right?

24 BY MR. HORAN: That's right.

25 BY MR. EVANS: Yes, sir.

26 BY THE COURT: Okay. Sustained.

27 BY MR. LUMUMBA: Okay, well, this is
28 cross-examination. I can lead her.

29 BY THE COURT: You can lead her; absolutely.

1 BY MR. LUMUMBA:

2 Q. Well, let me ask you this. You went down to the
3 store; is that right?

4 A. Yes.

5 Q. Somebody had called you; isn't that right?

6 A. Called me?

7 Q. About your bill.

8 A. They called me the day before.

9 Q. About your bill?

10 A. Yes, sir.

11 Q. Said that you had to pay it?

12 A. Yes.

13 Q. Said that if you didn't pay it, they were going to
14 take the furniture?

15 A. Yes.

16 Q. And so what you are telling us is that you had, and
17 you had somebody take you all the way to the store from this
18 house where you lived?

19 A. Yes.

20 Q. Which was at a good distance from the store; right?

21 A. It ain't that far.

22 Q. And you had them drive you all the way to the
23 store; right?

24 A. Yes.

25 Q. And I think what you told me or Mr. Freelon before
26 you actually paid them to take you to the store?

27 A. Yes.

28 Q. You paid them to take you to the store, and
29 according to you, you pull up in front of the store?

1 A. Yes.

2 Q. And you don't get out to go in to pay a bill that
3 they told you that you have got to pay or they are going to
4 take your furniture?

5 A. Yes, because I rode with his girlfriend all the
6 time, and she was going to take me anyway.

7 Q. They had told you you had to pay that bill or they
8 were going to take your furniture; right?

9 A. Uh-hum.

10 Q. And you go all the way up to the store. You don't
11 go in to pay it; right? Is that right?

12 A. Yes.

13 Q. Is that what you want to tell the jury?

14 A. I was going to pay it, yeah.

15 Q. But you didn't. You are right in front of the
16 store, and you don't get out and go pay it--

17 A. --no--

18 Q. --because you are not feeling good; right?

19 A. Yes.

20 Q. And you don't send him in to pay it?

21 A. Uh-uh.

22 Q. And so after getting right in front of the store,
23 you ride away. Is that what you are telling me?

24 A. Yes.

25 Q. Now by the way, you knew about the reward; right?

26 A. I didn't know right-- I didn't, I don't never
27 believe stuff like that.

28 Q. But you had heard about it?

29 A. Yeah.

1 Q. Okay, I see. In any event, you owed Tardy money.
2 You didn't pay them that day, and to this date you haven't
3 paid them?

4 A. Uh-uh.

5 Q. I'm sorry?

6 A. No.

7 Q. Do you have a friend by the name of Latarsha?

8 A. Tasha who?

9 Q. Pardon?

10 A. Tarsha Blissett?

11 Q. Yeah.

12 A. Yes.

13 Q. The name is Bliss; right?

14 A. Blissett.

15 Q. Blissett, right. Do you have a friend by the name
16 of Tarsha Blissett; right?

17 A. Yes.

18 Q. And you told her, did you not, that you were doing
19 this so you wouldn't have to pay any money back to Tardy?

20 A. No.

21 Q. She is still your friend, isn't she?

22 A. She don't come around that much.

23 Q. And so you were riding with Roy Harris; isn't that
24 correct?

25 A. Yes, sir.

26 Q. And that's what you want, you are telling the
27 ladies and gentlemen of the jury?

28 A. Yes, sir.

29 Q. Roy Harris is kind of a, he is a black man, and he

1 is older than you; is that correct?

2 A. Yes.

3 Q. And in fact, he has a hard time hearing; is that
4 correct?

5 A. Yes.

6 Q. You left, according to your story as I understand
7 it, about going into the store and all, you leave and go
8 somewhere else; is that right?

9 A. Yes.

10 Q. Okay. Now wouldn't it be more truthful to say that
11 actually you never did go to the store, or what you did is
12 you went over to your sister's house immediately? I mean he
13 drove you to your sister's house; right?

14 A. I went over there.

15 Q. But you didn't go to the store, did you? You
16 didn't even go in front of the store, did you?

17 A. Yes, I went to the store.

18 Q. So Roy would know because he was driving the car;
19 right?

20 A. Yes.

21 Q. And then what happened is that you went to your
22 sister's house; right?

23 A. Yes.

24 Q. And I think that what you have told us before is
25 that after going to your sister's house, you stayed there for
26 a little while. Then Roy came and got you and took you back
27 home; is that right?

28 A. Uh-hum.

29 Q. I'm sorry?

1 A. He came and got me.

2 Q. And you went back home?

3 A. Uh-hum.

4 Q. And the only thing you did was stay at your
5 sister's house for however much time and then went back home
6 which, was it across the street from where Roy and Ms.
7 Bingham live?

8 A. Yes, sir.

9 Q. And that's where you went?

10 A. Uh-hum.

11 Q. And your sister is Mary Wilson-- Mary Williams?

12 A. Mary Fleming.

13 Q. I'm sorry. Excuse me; you are right. Mary
14 Fleming; is that correct?

15 A. Yes, sir.

16 Q. And so how did you find out about the Tardy's?

17 A. I was at home sleep, and when I woke up, his
18 girlfriend was telling me about it.

19 Q. Okay. So now isn't it a fact that what actually
20 happened is that when he took you over to your sister's
21 house, then what happened is that your sister or somebody
22 else indicated to you that something had happened at Tardy,
23 and you guys all went together around the corner--

24 A. --no--

25 Q. --and saw the police out there?

26 A. No. I went over to her house. I came to her
27 house.

28 Q. Okay, I see. But your sister didn't take you
29 around the corner, or you didn't go around the corner with

1 them to see what had happened at Tardy's?

2 A. No.

3 Q. And your sister is Mary Fleming?

4 A. Yes.

5 Q. And you say that Ms. Bingham told you about it? Is
6 that what you are saying?

7 A. Uh-hum. She woke me up and told me.

8 Q. And that would be Mr. Harris' girlfriend?

9 A. Yes.

10 (Defense Counsel confer briefly.)

11 BY MR. LUMUMBA:

12 Q. Now let me see; now you said this was around 10
13 o'clock; is that right?

14 A. Yes.

15 Q. Okay, and you saw Curtis running?

16 A. Uh-hum.

17 Q. You didn't see him in a brown car?

18 A. I ain't see him in no brown car.

19 Q. You didn't see him getting in a car?

20 A. No.

21 Q. Or going to a car?

22 A. No.

23 Q. You saw him out there running?

24 A. (Witness nods her head.)

25 Q. Okay, and of course, you don't know what kind of
26 clothes he had on or anything like that?

27 A. No.

28 Q. You saw him twice, but you don't know how he was
29 dressed?

1 A. No. I just know his face when I see him.

2 Q. I'm sorry?

3 A. I know his face when I see him.

4 Q. I see. You still haven't paid that bill at
5 Tardy's?

6 A. Uh-huh.

7 BY MR. LUMUMBA: I don't have any further
8 questions right now.

9 REDIRECT EXAMINATION BY MR. EVANS:

10 Q. Ms. Fleming, you talked to the officers and told
11 them who you saw running from the store; is that correct?

12 A. Yes, sir.

13 Q. Who did you tell the officers you saw running from
14 the store?

15 A. I told John--

16 BY MR. LUMUMBA: --Judge, objection. That is
17 not, that is improper redirect. I didn't raise
18 anything about her talking to officers on
19 cross-examination.

20 BY MR. EVANS: He is trying to impeach her
21 identification.

22 BY MR. LUMUMBA: I'm not, I am trying to--
23 there is no question I am impeaching her, but--

24 BY MR. EVANS: --He is not impeaching; he is
25 trying.

26 BY MR. LUMUMBA: --Excuse me; excuse me.
27 Well, time will tell.

28 **BY THE COURT:** Well--

29 BY MR. LUMUMBA: --But let me say this. Can

1 we--

2 **BY THE COURT:** Somebody besides y'all will
3 decide that.

4 **BY MR. LUMUMBA:** Can we approach?

5 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
6 THE JURY AS FOLLOWS:)

7 **BY MR. HORAN:** He has tried to show interest
8 and bias by asking about this reward money--

9 **BY MR. LUMUMBA:** Then ask her about the reward
10 money. I have got a problem with, you know, like
11 leaving stuff for redirect which they should have
12 asked in direct.

13 **BY THE COURT:** Well, I would have a problem
14 with that too. I am trying to decide whether you
15 opened it up.

16 **BY MR. LUMUMBA:** Okay, I didn't say anything
17 about officers--

18 **BY THE COURT:** What was your question?

19 **BY MR. EVANS:** The question was did you tell
20 the officers--

21 **BY THE COURT:** --But I mean I just didn't hear
22 you.

23 **BY MR. EVANS:** Did you tell the officers who
24 you saw running from the store, or who did you tell
25 the officers you saw running from the store.

26 **BY MR. HORAN:** He has attacked her on who was
27 present, what she saw, things like that.

28 **BY MR. EVANS:** See, he has tried and even
29 though he hasn't put any witnesses on, he has

1 attacked her on telling other people that she
2 didn't see this. So we are entitled to go back and
3 rehabilitate--

4 BY MR. LUMUMBA: --Well, Judge, let me say,
5 this is how it goes. Let me see if I can say.
6 They are entitled to put on prior-- first of all,
7 statements which are consistent are generally not
8 admitted if they are prior statements because they
9 are self serving. They are entitled to put on a
10 prior consistent under certain circumstances, and I
11 have got it right here in the rule book. One of
12 those circumstances is where we have impeached her,
13 and then they are trying to rehabilitate her if the
14 statement comes to the time prior to the time that
15 the motive to lie would have occurred and then to--

16 BY THE COURT: --I don't know that he has
17 asked any questions to impeach her.

18 BY MR. LUMUMBA: Not yet. Not yet.

19 BY MR. HORAN: Judge, he has asked her if she
20 lied about it and made a false statement for the
21 purpose of gaining money.

22 BY THE COURT: Well, maybe I missed that
23 question.

24 BY MR. EVANS: He definitely asked that two
25 times--

26 BY MR. LUMUMBA: --Excuse me; excuse me.

27 BY THE COURT: Excuse me, Mr. Horan.

28 BY MR. LUMUMBA: Well, Judge, Judge.

29 BY MR. HORAN: I wasn't talking about that.

1 BY MR. LUMUMBA: If she denied it. I have not
2 impeached her. She denied that. The thing that
3 would impeach her, if somebody gets on the stand
4 and said she made such a statement --

5 BY MR. EVANS: Uh-uh.

6 BY MR. LUMUMBA: Excuse me; excuse me. At the
7 time that somebody gets on the stand and says she
8 made such a statement, then they are entitled to
9 come back and rehabilitate her. She doesn't need
10 rehabilitating yet. She has denied that she ever
11 made any statement. Can we--

12 BY THE COURT: That's right.

13 BY MR. HORAN: Look at 613, Judge.

14 BY THE COURT: Okay.

15 BY MR. HORAN: That is not correct.

16 BY THE COURT: Okay.

17 (Pause while the Court reads.)

18 BY MR. HORAN: I'm through. Read the rule.

19 BY THE COURT: I did. I read A. What you
20 want me to read, A or B?

21 BY MR. HORAN: That is not the right rule.

22 BY THE COURT: I had that feeling.

23 BY MR. HORAN: It's 803, I think. 801, I'm
24 sorry. 801 (d), (d) (1).

25 BY THE COURT: (Pause while the Court reads.)
26 Okay, but the question is not whether it's hearsay.

27 BY MR. HORAN: That's right. It's not
28 hearsay. It's--

29 BY THE COURT: --No, it's whether it's proper

1 redirect.

2 BY MR. EVANS: The only issue there is it's
3 something they covered. They covered why she told
4 that, and if they are attacking her saying that it
5 didn't happen, we should be able to go in and
6 verify that she has told other people it did. See,
7 he is trying to say she told other people it
8 didn't. So we are entitled to show that she told
9 other people it did.

10 BY MR. HORAN: That's exactly right.

11 BY MR. LUMUMBA: The state of the record is
12 that she said that she never told anybody
13 anything. That is the testimony. My question--

14 BY THE COURT: --Why wouldn't it be proper
15 rebuttal but not proper redirect? That's my
16 question.

17 BY MR. EVANS: Well, it would be proper either
18 way.

19 BY MR. LUMUMBA: No.

20 BY THE COURT: Well, at this time there is no
21 evidence that she did that though. That's what I'm
22 saying. At some point, at some time if they put
23 somebody on who says, oh, yeah, she said that, you
24 can come back and put her on in rebuttal. But if
25 she denies the statement, if she denies she even--
26 I know what you are saying. They are inferring
27 that, but I think he is right. In the state of the
28 record she has denied it and until somebody, until
29 somebody says that she lied about it, she has

1 denied it. You have got nothing to prove.

2 BY MR. EVANS: Whichever way the Court rules.
3 My only argument was that, you know, he had simply
4 opened the door to us, and it is not even opening
5 the door because for redirect, we can cover
6 anything that they have mentioned on cross.

7 BY THE COURT: And if she had-- yeah, but--

8 BY MR. LUMUMBA: I didn't mention anything
9 about police statements.

10 BY THE COURT: It didn't. It is just not
11 proper redirect, but it is subject to rebuttal.

12 BY MR. EVANS: Yes, sir. Thank you.

13 END BENCH CONFERENCE.

14 BY THE COURT: The objection is sustained.

15 CONTINUED REDIRECT BY MR. EVANS:

16 Q. You were asked by opposing Counsel about going to
17 the store to pay a bill?

18 A. Yes, sir.

19 Q. And is that why you went to the store the morning
20 of the murders?

21 A. Yes, sir.

22 Q. And again, to make sure I understand and the jury
23 understands, why did you not stop and go in the store once
24 you got in front of Tardy Furniture?

25 A. Because I didn't feel like it.

26 Q. How far along were you in your pregnancy?

27 A. 5 months.

28 Q. 5 months?

29 A. (Witness nods her head.)

1 Q. Opposing Counsel has asked you if you told a couple
2 of different people that you didn't actually see this. Has
3 anyone approached you and asked you to lie?

4 A. My sister.

5 Q. And what is your sister's name?

6 BY MR. LUMUMBA: Objection, Judge.

7 BY THE WITNESS:

8 A. Mary Fleming.

9 BY MR. LUMUMBA: Excuse me; excuse me. Excuse
10 me; excuse me. Objection. First, what is he
11 talking about?

12 BY THE COURT: Okay, let me see y'all back up
13 here.

14 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
15 THE JURY AS FOLLOWS:)

16 BY MR. LUMUMBA: Judge, now if he would have
17 asked if the people who-- see, I mentioned two
18 people who she had told that to.

19 BY MR. HORAN: Three.

20 BY MR. LUMUMBA: No, just two. The two people
21 that I mentioned were Latarsha Blissett and Stacey
22 Wright. I'm going to call them. Mary Fleming was
23 not mentioned as a person who she had told anything
24 to. Mary Fleming is--

25 BY THE COURT: --Mary Fleming was mentioned as
26 to what?

27 BY MR. EVANS: Uh-hum.

28 BY THE COURT: As to what though?

29 BY MR. LUMUMBA: As her sister.

1 **BY THE COURT:** I understand that.

2 BY MR. LUMUMBA: Okay, she went over to her
3 sister's house, and I asked her if she went to her
4 sister's house and if her sister took her around
5 the corner to see the thing, and she said no, that
6 her sister didn't take her around the corner. I
7 didn't ask her about any statement she made to her
8 sister or any conversation.

9 **BY THE COURT:** I don't remember that either.

10 BY MR. LUMUMBA: There was no conversation
11 to--

12 BY MR. EVANS: --Your Honor, he has asked
13 about any statements that were made, and he is
14 accusing her of lying. So at this point I think we
15 are entitled to ask if we have asked her to lie or
16 anyone--

17 **BY THE COURT:** --But he hasn't accused her of
18 lying yet unless I missed something.

19 BY MR. EVANS: Yes, sir. Yes, sir.

20 **BY THE COURT:** Where? What statement that he
21 has made?

22 BY MR. EVANS: When he asked her two or three
23 different times if she told different people that
24 she made this up. That is accusing her of lying
25 for the money. Now we are entitled clearly to go
26 back in and ask her if anybody has asked her to
27 lie.

28 BY MR. LUMUMBA: He is trying to-- I'm sorry.

29 BY MR. HORAN: --including someone that he has

1 mentioned.

2 BY MR. LUMUMBA: Judge, first of all, let me
3 tell you if there was-- and this is bizarre for
4 like I say, but let me just say this. Let me say
5 this. First of all, they are trying to impeach
6 Mary Williams-- Mary Fleming, I'm sorry, before
7 Mary Fleming even--

8 BY MR. EVANS: --No.

9 BY THE COURT: No, no, no. I don't think that
10 is true.

11 BY MR. LUMUMBA: Okay, okay, but here is the
12 other situation. I can't accuse her of lying.
13 First of all, I didn't. I just asked her a
14 question.

15 BY MR. EVANS: You could have--

16 BY THE COURT: --Did you ask her if she was
17 lying?

18 BY MR. LUMUMBA: I asked her if she told the
19 people that she made the story up. I did, and she
20 said no.

21 BY THE COURT: Okay. That let's it in.
22 That's my opinion.

23 BY MR. FREELON: But not Mary Fleming.

24 BY MR. LUMUMBA: For the two people that I
25 asked--

26 BY THE COURT: --I think once you get into it,
27 you have opened it up for the whole thing.

28 END BENCH CONFERENCE.

29 BY THE COURT: The objection is overruled.

1 BY MR. EVANS: Thank you, Your Honor.

2 BY MR. EVANS:

3 Q. Who asked you to lie about seeing Curtis running?

4 A. Before I came up here? While ago downstairs?

5 BY MR. LUMUMBA: Excuse me, Judge. Excuse me.
6 My objection is also to hearsay. There is clearly
7 an objection to that. No exception to that,
8 hearsay.

9 BY MR. EVANS: Wait until the Court rules.

10 BY THE COURT: Well, he is not asking her to
11 testify as to what was said.

12 BY MR. EVANS: No, sir.

13 BY MR. LUMUMBA: Well, he is asking her to
14 testify if somebody told her to lie, and somebody--
15 that contention itself is that somebody told her
16 something, which is telling her something is a
17 statement which is hearsay.

18 BY THE COURT: It is admissible. I overrule
19 the objection.

20 BY MR. EVANS:

21 Q. Again, who asked you to lie about seeing Curtis
22 running from Tardy's?

23 A. My sister told me to get up there and say--

24 BY MR. LUMUMBA: --Objection.

25 BY MR. EVANS: --All right--

26 BY THE COURT: --Sustained.

27 BY MR. EVANS:

28 Q. The Judge says you can't say what she told you at
29 this point.

1 A. Oh. My sister.

2 Q. Okay, and what is your sister's name?

3 A. Mary Fleming.

4 Q. Is this the same Mary Fleming that he has asked you
5 about a few minutes ago?

6 A. Yes, sir.

7 Q. Is what you told the ladies and gentlemen of the
8 jury about who you saw running from Tardy Furniture the
9 truth?

10 A. Yes, sir.

11 BY MR. EVANS: That's all we have of this
12 witness, Your Honor.

13 BY THE COURT: Okay, I assume she is not
14 finally excused?

15 BY MR. EVANS: No, sir, because what we had
16 talked about.

17 BY THE COURT: Yes, sir. You will need to
18 stay. You can go back to the witness room.

19 WITNESS LEAVES COURTROOM.

20 BY THE COURT: Who will you have next?

21 BY MR. HORAN: James Edward Kennedy. Judge,
22 can either one of the attorneys step outside?

23 BY THE COURT: For the purposes y'all did
24 before? Yeah. Okay.

25 (Mr. Freelon and Mr. Horan left the courtroom
26 briefly, and upon their return, proceedings
27 continued:)

28 BY THE COURT: Have you been sworn?

29 BY THE WITNESS: No.

1 BY THE COURT: Raise your right hand.

2 JAMES EDWARD KENNEDY,

3 a black male called to testify as a witness by the State of
4 Mississippi, having first been duly sworn, testified as
5 follows, to-wit:

6 BY THE COURT: Have a seat.

7 BY MR. HORAN: May I proceed, Your Honor?

8 BY THE COURT: Uh-hum.

9 DIRECT EXAMINATION BY MR. HORAN:

10 Q. Please state your name for the record if you
11 would.

12 A. James Edward Kennedy.

13 Q. Mr. Kennedy, if you would, please sit up, and that
14 microphone does amplify your voice. Speak into it, but
15 please don't get too close to it, okay?

16 A. All right.

17 Q. Do you go by BoJack also?

18 A. Yeah.

19 Q. Do you know Curtis Flowers?

20 A. Yes, sir.

21 Q. On July the 16th of 1996, did you know Curtis
22 Flowers?

23 A. Yes, sir.

24 Q. You know him pretty well then? You know him when
25 you saw him?

26 A. Oh, yes.

27 Q. Do you see Curtis Flowers in the courtroom here
28 today?

29 A. Yes, sir.

1 Q. Would you point to him, please?

2 A. (Witness points.)

3 BY MR. HORAN: Your Honor, may I have the
4 record reflect that he has identified the
5 Defendant?

6 BY THE COURT: Let the record reflect that.

7 BY MR. HORAN:

8 Q. Did you see Curtis Flowers on the morning of July
9 the 16th, 1996?

10 A. Yes, sir.

11 Q. Would you describe the circumstances in which you
12 saw Mr. Flowers?

13 A. Well, I was standing on my porch getting ready to
14 take my sister to work.

15 Q. What time do you usually take your sister to work?

16 A. 7:15.

17 Q. All right, go ahead.

18 A. And he came through. We spoke briefly. And that's
19 the last time I seed him.

20 Q. Okay, you say at your residence on Applegate. Do
21 you live there now?

22 A. Yes, sir.

23 Q. What number is that on Applegate?

24 A. 635 South Applegate.

25 Q. Okay, in relationship to --I want to see if you
26 can-- you may or may not be able to do this, Mr. Kennedy.
27 But was there an intersection there where your residence is
28 or road that goes by your house?

29 A. A road goes by my house.

1 Q. What is the name of that?

2 A. Angelica Drive.

3 Q. All right, Angelica Drive. Does that go down to
4 the Angelica manufacturing plant?

5 A. Yes, sir.

6 Q. I hand you what has been marked as State's Exhibit
7 D-9, I believe. I think I will hand you D-7, and I will
8 point out to you on here. Do you see Applegate Street on
9 there? That is also known as 51 Highway, is it not?

10 A. That's right.

11 Q. Do you see Angelica Drive on there right here?

12 A. Right there.

13 Q. Okay, where would your residence be? If you would,
14 put an "X" on there on that exhibit where in relationship to
15 Applegate Street and Angelica, where your residence would be?

16 A. (Pause while witness looks at exhibit.)

17 Q. Here is Angelica here. Here is Applegate. That's
18 the intersection right there.

19 A. This is the intersection.

20 Q. Yes, sir. That is kind of--

21 A. I will be to the left of that.

22 Q. Is it at the intersection of Applegate and
23 Angelica?

24 A. Right.

25 Q. Okay, would it be in here then?

26 A. Yeah, be in there.

27 Q. All right, I'm going to put your initials right
28 here. (Mr. Horan writes on Exhibit D-7.) All right. Was Mr.
29 Flowers-- you say you saw him. Was he in an automobile?

1 A. He was walking.

2 Q. He was walking. Was he walking towards Angelica or
3 away from Angelica?

4 A. Towards it.

5 Q. Was he on Applegate, or was he on Angelica?

6 A. Angelica.

7 Q. Did you ever see him again?

8 A. No, sir.

9 Q. Would you describe whether or not he was walking--
10 how was he walking?

11 A. Kind of fast.

12 Q. And how long have you known the Defendant Curtis
13 Flowers? Prior to that date, how long had you known him?

14 A. I can't really say.

15 Q. Knew him a good while?

16 A. Right.

17 Q. You were from Winona, from the Winona area?

18 A. That's right.

19 Q. Now when you saw Mr. Flowers, would you describe
20 for the benefit of the jury how far you were from him when
21 you saw him?

22 A. Uh.

23 Q. Be more than, how many feet approximately?

24 A. Well, I can't exactly say how many feet.

25 Q. Close enough to him to know who it was?

26 A. That's right.

27 BY MR. HORAN: I tender the witness.

28 BY MR. LUMUMBA: May I proceed, Judge?

29 BY THE COURT: Yes.

1 CROSS-EXAMINATION BY MR. LUMUMBA:

2 Q. Good afternoon, Mr. Kennedy.

3 A. How you doing?

4 Q. I'm doing good. Mr. Kennedy, you took your sister
5 to work the day that you saw the individual you say you saw;
6 is that right?

7 A. Yes, sir.

8 Q. Okay, and you take your sister to work on a number
9 of days, don't you?

10 A. Not every day.

11 Q. But you take her to work more than-- you do take
12 her to work. You have taken her to work on other days;
13 right?

14 A. Are you saying have I took?

15 Q. Yeah, have you taken her to work on other days?

16 A. Other days, yeah.

17 Q. Yeah, in fact, your sister-- and she works at the
18 same time every day; right?

19 A. Huh?

20 Q. She goes to work at the same time every day?

21 A. Not every day.

22 Q. Well, every day that she works, she works at-- she
23 is supposed to be there about 7:30 in the morning; isn't that
24 correct?

25 A. That's right.

26 Q. And every time you take her she is supposed to be
27 there about 7:30 in the morning; right?

28 A. I don't quite understand what you mean.

29 Q. Well, let me ask you this. Is your sister's hours

1 at work at 7:30 been the same or was it different on the-- on
2 the day that you saw her or the day that you saw the person
3 that we are talking about now, was your sister's hours
4 different on that day than they were on any other day in
5 terms of when she had to be at work?

6 A. What are you saying now? Explain to me what you
7 are saying.

8 Q. Let me ask you this. What day of the week was
9 that?

10 A. Well.

11 Q. What day of the week was that that we are talking
12 about, that counsel has asked you about? What day of the
13 week was it?

14 A. I really don't remember what day, but I know what
15 time.

16 Q. Do you know what-- okay. Do you know what date it
17 was?

18 A. Let me see. What exactly are you trying to get me
19 to say?

20 Q. No, I am just asking you a simple question. Do you
21 know-- I'm not trying--and what am I doing? I'm just--

22 A. --What are you trying to get me to say?

23 Q. I am just trying to get you to say what date it
24 was. Do you know what date it was?

25 A. I believe it was on the 17th.

26 Q. The 17th? Okay. All right. Well, now let me ask
27 you this. I guess what I'm trying to find out, was the day
28 you said you saw Mr. Flowers, that was when you saw the
29 person you saw, he was just walking down the street; right?

1 A. Walking down Angelica's?

2 Q. He was walking down-- he was walking past your
3 house down the street; is that right?

4 A. That's right.

5 Q. Okay. So just, and when he was walking down the
6 street, it's not unusual for people to walk down that street,
7 is it?

8 A. I guess that's a public street.

9 Q. Okay. And if it's a public street, people walk on
10 the street on other days. They walk on the street all the
11 time, don't they?

12 A. Well, I don't be out there all the time, so I
13 couldn't answer that.

14 Q. Okay, but you are out there-- that wasn't the first
15 day you were out there, was it?

16 A. I don't, I wouldn't think so.

17 Q. How often have you taken, how often did you take
18 your sister to work during the course of a week?

19 A. Most of the time if my niece didn't take her, I
20 took her.

21 Q. Okay, so you took her a lot. Would that be a safe
22 statement?

23 A. Right.

24 Q. And she had to be at work at the same time every
25 day at 7:30 that she worked; is that correct?

26 A. What are you trying to get me to say? She was late
27 or something?

28 Q. No, no. Don't be so suspicious. Just answer the
29 questions.

1 **BY THE COURT:** Yeah, right. You just answer--
2 he is going to ask the questions, and you just
3 answer them, and you can explain it any way you
4 want to. But just answer them the way he asks
5 them.

6 **BY MR. LUMUMBA:**

7 Q. The question is doesn't she have to be at work at
8 7:30 every time she goes to work?

9 A. Well, she is supposed to be there, yeah.

10 Q. Okay. And so any time that you are taking her to
11 work, you have got to take her at the same time. Isn't that
12 correct?

13 A. Not necessarily.

14 Q. Sometimes she is late. Is that what you want to
15 say?

16 A. That's right.

17 Q. Okay. But in any event, this was not the first
18 time that you waited outside to take your sister to work.
19 You take your sister to work on a lot of different days;
20 isn't that right?

21 A. That's right.

22 Q. Okay. And you don't really remember what day of
23 the week it was, do you?

24 A. Not exact.

25 Q. And it wasn't, that day was no different than any
26 other day for you; isn't that right? That morning was no
27 different than any other morning, was it?

28 A. I don't quite understand where you coming from.

29 Q. Was it anything special about that morning?

1 A. What particular morning?

2 Q. The morning that you say you saw somebody walking
3 past your house, and you pointed to Mr. Flowers and said it
4 was him. Was anything special about it?

5 A. I don't quite understand what you saying.

6 Q. Was there anything, did anything happen that
7 morning that was different?

8 A. (No response.)

9 Q. Do you understand what I'm saying?

10 A. (No response.)

11 Q. Was it your birthday?

12 A. No, sir.

13 Q. Was it Easter?

14 A. No, sir.

15 Q. Was it Christmas?

16 A. No, sir.

17 Q. Did you see a car accident out front around that
18 time or anything like that?

19 A. No, sir.

20 Q. So do you understand; it was nothing different. It
21 was just an ordinary day; isn't that right?

22 A. I guess it was.

23 Q. And all the other days that you take your sister to
24 work are ordinary days; isn't that right usually? Right?

25 A. I reckon.

26 Q. And you never gave, you never talked to the police
27 and said anything about this day that you think was the day
28 that you saw Mr. Flowers until around about September the
29 17th, 1996. Isn't that right?

1 A. Is that what you got in your hand?

2 Q. Would you like to see your statement to see if
3 that's the right date?

4 A. September the what now?

5 Q. The 17th, 1996.

6 A. That's correct.

7 Q. And September the 17th, '96, is over two months, I
8 mean after the time you claim to have seen Mr. Flowers; isn't
9 that correct?

10 A. That's right.

11 Q. And many days happened, so that was over like two
12 months, over 60 days later. Your sister worked many mornings
13 at that time; right? Is that right?

14 A. What are you trying to say now?

15 Q. Well, let me ask you this. Was your sister working
16 before-- your sister was working before you saw Mr. Flowers,
17 and your sister was working after you claim you saw Mr.
18 Flowers. I mean she was working. How long has your sister
19 been working at the place where she works?

20 A. She been working there a while.

21 Q. How long?

22 A. I don't know exactly, but--

23 Q. --How long has she been working-- what is the name
24 of the place she works?

25 A. Still a Pair.

26 Q. And how long had she been working there as of
27 1996? How many years she been working there?

28 A. I really don't know.

29 Q. Has she been working there for a long time before

1 then?

2 A. She been working there a pretty good while.

3 Q. Okay, and she been, well, she is still working
4 there; right?

5 A. That's right.

6 Q. And she was still working there up until September
7 the 17th of '96; isn't that right?

8 A. She is still working there.

9 Q. Okay, and the thing that she does, she goes to work
10 when she has got to be there every day; is that right? Well,
11 most of the time; right?

12 A. Every day.

13 Q. And you take her if your niece doesn't take her;
14 right?

15 A. Sometimes.

16 Q. And you take her and so it was nothing special
17 about you taking your sister to work; right?

18 A. Not really.

19 Q. There was nothing special for you to remember about
20 that morning; isn't that right?

21 A. What are you trying to say now?

22 Q. Well, it wasn't even special enough for you to
23 remember the date that it was because you don't even know the
24 date that it was; right?

25 A. (No response.)

26 Q. If you can answer that yes or no-- I'm sorry;
27 excuse me. You don't know the day that it was. You don't
28 know what day of the week that it was?

29 A. I need to know what are you trying to say.

1 **BY THE COURT:** Well, that is a pretty simple
2 question. Now you need to answer the question like
3 he asks you.

4 BY MR. LUMUMBA:

5 Q. Do you know the day that it was?

6 A. The day that I took her to work?

7 Q. Yeah. What day of the week was it?

8 A. I don't know what day of the week it was.

9 Q. Could it have been Monday, Tuesday, Wednesday,
10 Thursday, or Friday? She works on all those days; is that
11 correct?

12 A. That's right.

13 Q. Okay, it could have been any one of them. Now you
14 say that you think it was the 17th; is that right?

15 A. That's what I said.

16 Q. Okay, but it could have been-- it could have
17 actually been another day; isn't that right? You don't know
18 it was the 17th. It could have been the 19th, or it could
19 have been the 12th or the 13th or the 14th; isn't that
20 right?

21 A. This was the 17th.

22 Q. Oh, it was the 17th. Okay. Okay, now let me ask
23 you this. This day that you saw Mr. Flowers-- by the way,
24 you are a friend of Doyle Simpson; isn't that right?

25 A. Friend of him? Excuse me?

26 Q. Do you know Doyle Simpson?

27 A. I know him.

28 Q. Okay, and you guys drink together sometimes?

29 A. Not me, no.

1 Q. Okay. There was-- I came and talked to you
2 before. We talked; right?

3 A. Yes.

4 Q. Okay, and actually what happened is we came and
5 tried to talk, and you told me to come back at another time,
6 and you would talk to me when you got ready. That's what you
7 told me; right?

8 A. That's right.

9 Q. Okay, so when I came back, I think you shared with
10 me that you were familiar with the fact that there was a
11 reward being offered. You knew this; is that right?

12 A. I remember telling you that I saw it in the store.

13 Q. Okay, that it was posted; right?

14 A. That's right.

15 Q. Okay, now let me ask you also. Let me ask you this
16 here. And if I'm not mistaken, you described for me and
17 actually, you had actually already described for the police
18 what kind of clothes you say that Mr. Flowers was wearing on
19 whatever day it was that you saw him. Isn't that correct?

20 A. That's right.

21 Q. Okay, and you said he had white pants on; is that
22 right?

23 A. That's right.

24 Q. Long white pants; isn't that right?

25 A. That's right.

26 Q. And you said he had a black sweater on; right?

27 A. Gray and black.

28 Q. Okay, gray and black sweater; is that right?

29 A. That's right.

1 Q. Anyway, that is a lot different than a white
2 T-shirt; right?

3 A. (No response.)

4 Q. He had a gray and black sweater; that's what he had
5 on; right?

6 A. That's right.

7 Q. Okay. And you didn't see him with a cap on either,
8 did you?

9 A. No, sir.

10 Q. And he had long white pants on; right?

11 A. Yes, sir.

12 Q. And you said he was headed down to Angelica;
13 right? He was headed, walking down Angelica Road; is that
14 right?

15 A. That's right.

16 Q. Now by the way, you can walk down Angelica Road and
17 go a number of different places, can't you?

18 A. (No response.)

19 Q. You can go to Church Street for number one, can't
20 you? Doesn't Angelica hit Church?

21 A. I don't know.

22 Q. You don't know?

23 A. I don't know.

24 Q. Don't you live there?

25 A. I don't travel that way that much.

26 Q. Did he just do some map with you? Let me see. Let
27 me get this.

28 BY MR. HORAN: It's Exhibit 7, I believe.

29 BY MR. LUMUMBA: Is it Exhibit 7?

1 BY MR. HORAN: Yeah.

2 BY MR. EVANS: That's it.

3 BY MR. LUMUMBA:

4 Q. You just put a mark on here, didn't you?

5 A. No, he did.

6 Q. Oh, okay. Where did he put it at?

7 A. (Pause.) Right there.

8 Q. Okay. And that is Angelica; right?

9 A. That's right.

10 Q. Now on this map, now let me see. This is
11 Angelica. Now you see this map here. First of all, you said
12 right here?

13 A. I said right there.

14 Q. Okay, good, good. Okay. I don't know if the jury
15 had a chance to see it. But is it where I have got my finger
16 at?

17 A. Right there.

18 Q. Okay, I got it in the right spot?

19 A. Yeah.

20 Q. Okay. I don't know if they can see it either but.
21 (Holds Exhibit D-7 in front of the jury.) And that is right
22 there at the top of Angelica Drive near, and I can't see
23 Angelica Drive. I have got my finger on it, but the spot is
24 right here at Angelica and what they call 51; is that
25 correct?

26 A. That's right.

27 Q. Okay, I'm going to move my finger so they can see
28 the name of the street, Angelica Drive. We are going to pass
29 it around. Angelica Drive, Applegate. And Applegate is 51;

1 is that correct?

2 A. 51 and Applegate run together.

3 Q. Have you ever noticed that right below your street
4 where you are, where you have said your house is there is a
5 big street called Church Street? You ever noticed that?

6 A. Have I ever noticed it?

7 Q. Yeah.

8 A. (Witness shakes his head.)

9 Q. Let me pass this down.

10 (Exhibit D-7 passed to the jury.)

11 Q. So since you don't go down there, you don't know
12 where a person could be going when they go down that way; is
13 that right?

14 A. (No response.)

15 Q. I mean, you know, if a person walks down there, you
16 really don't know where they are going, do you? Isn't that a
17 true statement?

18 A. I don't know where he went, no.

19 Q. Now you-- and I'm not, I'm not trying to be funny
20 or anything, but let me just ask you this. When you talked
21 to the police, you weren't just trying to tell them what you
22 thought they wanted to hear, were you?

23 A. No.

24 Q. Okay, good. Because actually, when you told the
25 police that the first thing you said actually is that the man
26 had on a black sweater. By the way, this is in July too,
27 isn't it? This was in July; right?

28 A. (Witness makes expression but no audible response.)

29 Q. I'm sorry; maybe I am assuming. This 17th, it was

1 the 17th of what? What month was it?

2 A. Oh. What month of what now?

3 BY MR. HORAN: I think he is confused, Mr.
4 Lumumba.

5 BY MR. LUMUMBA:

6 Q. When you saw Mr. Flowers, what month was it?

7 A. I don't know the month.

8 Q. You don't remember the month?

9 A. (Witness shakes his head.)

10 Q. Okay, all right. But whenever you saw him, it was
11 hot outside, wasn't it?

12 A. Not that hot.

13 Q. Well, just let me ask you this. Do you remember a
14 conversation between you and the police officer where you
15 told the police officer that the man had a black sweater on,
16 and then the police officer asked you again was it gray and
17 black, and then you said yes, it was gray and black. And
18 then didn't he ask you did it have some writing on it, and
19 didn't you tell him that it was a T-shirt, and then didn't
20 you come in after that and say, well, yeah, it was a T-- it
21 really had some black writing on it, you know, black. In
22 other words, you changed it into a T-shirt with black writing
23 on it. Or excuse me; you changed it into a gray jersey with
24 some little black ink on it. Do you remember moving from a
25 black sweater to a gray jersey with a little black ink on
26 it? Do you remember that happening?

27 A. No.

28 Q. So you know that the man had a black and gray
29 sweater on and long white pants; right?

1 A. Gray and black.

2 Q. Gray and black sweater and long white pants; right?

3 A. That's right.

4 BY MR. LUMUMBA: Excuse me, Judge, one
5 moment.

6 (Defense Counsel confer.)

7 BY MR. LUMUMBA: I don't have any further
8 questions.

9 BY MR. HORAN: May I have this marked for
10 identification, please.

11 (STATEMENT OF JAMES EDWARD KENNEDY WAS MARKED
12 AS STATE'S EXHIBIT S-104 FOR IDENTIFICATION.)

13 (Exhibit S-104 for identification shown to
14 Defense Counsel.)

15 REDIRECT EXAMINATION BY MR. HORAN:

16 Q. Mr. Kennedy, I hand you what has been marked for
17 identification as State's Exhibit number 104. Do you
18 remember the conversation you had with John Johnson and the
19 other police officer, Johnny Hargrove, that Counsel for the
20 Defendant made reference to that Mr. Johnson gave, taped a
21 statement that you gave them?

22 A. Yes.

23 Q. On September 17th. If you will, this is a
24 transcript of it. Mr. Johnson's question was: "Mr. Kennedy,
25 I want to direct your attention back to July the 16th, 199"--

26 BY MR. LUMUMBA: --Excuse me, Judge.

27 Objection. Objection. What?

28 BY MR. HORAN: It's the rule of completeness,
29 Your Honor.

1 BY MR. LUMUMBA: Objection. There is no basis
2 for him to be reading that to the witness.

3 BY MR. HORAN: Ask him does he recall making
4 that statement. He has gone into part of the
5 statements. I am entitled to go into--

6 BY MR. LUMUMBA: --I haven't gone into any of
7 the statement. I just asked him if he remembered
8 saying certain things to the officers. I didn't
9 use that statement.

10 BY MR. HORAN: I want to see if he remembers
11 saying other things to--

12 BY THE COURT: --Right. He can ask that
13 question.

14 BY MR. HORAN:

15 Q. Do you remember Mr. Johnson--

16 BY MR. LUMUMBA: --Can we approach?

17 BY THE COURT: Sure.

18 BY MR. LUMUMBA: My objection is he is leading
19 the witness and trying to feed the witness a date.
20 That's exactly what he is doing.

21 BY THE COURT: I understand. I sustain it on
22 that basis. On the other basis, I don't.

23 BY MR. LUMUMBA: Okay, that is my objection.

24 BY MR. HORAN: Okay, I will just let him read
25 it, Your Honor.

26 BY THE COURT: Whatever. You can't lead him.

27 BY MR. LUMUMBA: Well, now not only can't he
28 lead him, I don't think he can feed the witness a
29 date.

1 BY MR. HORAN: It's the statement he gave,
2 Your Honor. He went into the statement--

3 BY THE COURT: Well, I think he can do that.
4 It's on the statement, isn't it?

5 BY MR. HORAN: Yes, sir.

6 BY THE COURT: Okay. He can do that.

7 BY MR. LUMUMBA: Since I didn't use that
8 statement, I am objecting because of improper
9 redirect. I didn't show him that statement, didn't
10 use that statement.

11 BY THE COURT: No, but you asked him about
12 other statements, so he is entitled--

13 BY MR. LUMUMBA: --Well, I would--

14 BY MR. HORAN: --He asked him about this
15 statement also.

16 BY THE COURT: Okay.

17 BY MR. LUMUMBA: Can I request the opportunity
18 for recross then, Judge, since I didn't have a
19 chance to go into that statement?

20 BY MR. HORAN: Your Honor, he went into it.
21 He had every opportunity--

22 BY THE COURT: --You had a chance to do it and
23 did do it.

24 BY MR. LUMUMBA: Okay, thank you, Judge. No
25 problem.

26 BY MR. HORAN:

27 Q. Mr. Kennedy, I ask every witness this, and I don't
28 want-- can you read?

29 A. A little bit.

1 Q. Okay, can you read Mr. Johnson's statement-- you
2 remember him asking you a number of questions, do you?

3 BY MR. LUMUMBA: Let him read it. Let's see
4 if he can read.

5 BY THE COURT: I assume that is not Mr.
6 Johnson's statement.

7 BY MR. HORAN: No, it's his statement.

8 BY THE COURT: Okay.

9 BY MR. HORAN:

10 Q. Read that right there for me, please, if you can.

11 A. "Mr. Kennedy, I asked you what to" --

12 Q. Direct?

13 A. "Direct you."

14 BY MR. LUMUMBA: No, he can't read it for the
15 witness now, Judge.

16 BY THE COURT: If he can't read it, he can't
17 read it. You stand over there. That will help.

18 BY MR. HORAN: Okay, all right.

19 BY MR. HORAN:

20 Q. I'm sorry, Mr. Kennedy.

21 BY MR. LUMUMBA: Maybe that is how the officer
22 got the statement.

23 BY MR. HORAN:

24 Q. Do you remember-- I will ask him like this. Do you
25 remember--

26 BY MR. EVANS: --I object to that, Your
27 Honor. That is improper.

28 BY MR. HORAN:

29 Q. Do you remember Mr. Johnson asking you about the

1 murders at Tardy Furniture?

2 A. Yes.

3 Q. What day that was?

4 A. Right.

5 Q. And whether or not you saw this man sitting over
6 here on that day?

7 A. Yes, sir.

8 BY MR. LUMUMBA: Objection. Leading
9 question.

10 BY MR. HORAN:

11 Q. Do you remember him asking you that?

12 BY THE COURT: That is not leading. Go
13 ahead.

14 BY MR. HORAN:

15 Q. Do you remember him asking you whether or not you
16 saw Curtis Flowers on the day that the people were killed at
17 the Tardy Furniture Store? Do you remember Mr. Johnson
18 asking you that?

19 A. Yes.

20 Q. And did you tell him you did?

21 A. Yes.

22 Q. Okay. All right, and you also told him, did you
23 not, that you saw him wearing tennis shoes, did you not?

24 A. Tennis shoes.

25 Q. Tennis shoes. Didn't you tell Mr. Johnson that you
26 saw him wearing tennis shoes but didn't know what kind of
27 tennis shoes they were? Do you remember telling Mr. Johnson
28 that?

29 A. (Pause.) Oh, yes.

1 Q. Okay. Now this statement that you gave Mr. Johnson
2 was on September the 17th of 1996; is that right?

3 A. Correct.

4 Q. And your recollection at that time would be a lot
5 better than it is now?

6 A. That's right.

7 Q. Okay. You remember testifying under oath at a
8 prior hearing regarding this matter. Do you remember that,
9 Mr. Kennedy?

10 A. Yes.

11 Q. And did you also testify on that particular date
12 that it was July the 16th, 1996--

13 BY MR. LUMUMBA: --Excuse me. Excuse me,
14 Judge. Can you show me-- that is improper. First
15 of all, can we approach on this?

16 BY THE COURT: Uh-hum.

17 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
18 THE JURY AS FOLLOWS:)

19 BY MR. LUMUMBA: Isn't prior testimony a self-
20 serving statement?

21 BY MR. HORAN: Refreshing his recollection.

22 BY MR. LUMUMBA: First of all, he isn't
23 refreshing him; he is leading him is what he is
24 doing.

25 BY THE COURT: Right, and under 611 with this
26 witness, he absolutely can lead him. You will
27 acknowledge that, I know.

28 BY MR. LUMUMBA: Okay.

29 BY THE COURT: I'm not going to let him

1 testify.

2 BY MR. LUMUMBA: But here is-- hold it. The
3 problem I have got is see, I didn't use any of this
4 stuff. I didn't use this transcript. I don't
5 believe I did. I didn't use this transcript.

6 BY THE COURT: Y'all have used every
7 transcript known to man in this case.

8 BY MR. LUMUMBA: But I didn't use this one.

9 BY THE COURT: Well, I know.

10 BY MR. EVANS: Asked him if he didn't.

11 BY THE COURT: That is the exception to the
12 rule.

13 BY MR. LUMUMBA: Well, that's why I would like
14 to ask him a couple of other questions since we are
15 getting into this.

16 BY THE COURT: Well, you had the opportunity
17 to do that on cross-examination. Y'all don't want
18 to beat a dead horse anyhow.

19 END BENCH CONFERENCE

20 BY MR. HORAN:

21 Q. Mr. Kennedy, my question is you remember testifying
22 under oath earlier that it was July the 16th, 1996?

23 BY MR. LUMUMBA: No, no. That is a leading
24 question. He can ask him--

25 BY MR. HORAN: --You have already ruled--

26 BY THE COURT: --and I have already ruled. He
27 can ask a leading question.

28 BY MR. LUMUMBA: He can ask a leading
29 question?

1 **BY THE COURT:** Uh-huh. Under 611, he can do
2 it in this context.

3 **BY MR. LUMUMBA:** Okay. Which page are we
4 talking about?

5 **BY MR. HORAN:** I will identify.

6 **BY THE COURT:** I don't, y'all have me at a
7 disadvantage.

8 **BY MR. HORAN:** 468.

9 **BY MR. LUMUMBA:** I'm sorry; what page?

10 **BY MR. HORAN:** 468 of the transcript.

11 **BY MR. HORAN:**

12 Q. You were asked the question: "On July the 16th,
13 1996, between 7:00 and 7:30 in the morning, did you see
14 Curtis Flowers?" And your response was, "Yes, sir."

15 A. That's right.

16 Q. It's your testimony here today that you saw the
17 Defendant Curtis Flowers on the date that the four people
18 were killed at the Tardy Furniture Store walking in front of
19 you down Angelica?

20 A. Yes, sir.

21 Q. The day the four people were killed--

22 **BY MR. LUMUMBA:** --Objection, Judge. All this
23 leading. I mean is he going to testify?

24 **BY THE COURT:** Well, no, I'm not going to
25 allow him to testify. I have already ruled-- well,
26 he is through. I won't get into that. I have
27 already ruled.

28 **BY MR. HORAN:**

29 Q. Do you see the person--

1 **BY THE COURT:** --I'm sorry; I thought you were
2 through.

3 **BY MR. HORAN:** One more question.

4 **BY MR. HORAN:**

5 Q. Is the person you saw that you knew as Curtis
6 Flowers in the courtroom today that you saw walking in front
7 of your house on the day the people were killed at Tardy
8 Furniture? Is he in the courtroom?

9 A. Yes.

10 Q. Would you point to him, please?

11 A. (Witness points.)

12 **BY MR. HORAN:** Thank you. No further
13 questions.

14 **BY THE COURT:** Is he finally excused?

15 **BY MR. HORAN:** Yes, sir.

16 **BY MR. EVANS:** Yes, sir.

17 **BY MR. LUMUMBA:** Yes, sir.

18 **BY THE COURT:** Okay, you are free to go. Let
19 me see y'all up here just a second.

20 WITNESS EXCUSED.

21 **BY THE COURT:** You don't have to take this,
22 Linda. This is time management.

23 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
24 THE JURY WAS TAKEN AT FIRST WITHOUT THE REPORTER
25 PRESENT BUT WAS TRANSCRIBED FROM THE TAPE UNTIL THE
26 REPORTER JOINED COUNSEL AT THE BENCH:)

27 **BY THE COURT:** Who do y'all have next?

28 **BY MR. EVANS:** We were thinking about Roxanne
29 Ballard next.

1 **BY THE COURT:** Okay, now they have made
2 reservations for the jury to eat at a place that is
3 going to take them about twenty minutes to get
4 there. So therefore, we have got to stop at 5:30.
5 I am willing to start this--

6 **BY MR. LUMUMBA:** -- I think we have got to have
7 a hearing.

8 **BY THE COURT:** Huh?

9 **BY MR. LUMUMBA:** I think we have to have a
10 hearing. We request a hearing to establish her
11 foundation of her knowledge.

12 **BY MR. HORAN:** We have laid that predicate,
13 Your Honor. We don't need a hearing--

14 **BY THE COURT:** --Wait a minute now.

15 **BY MR. LUMUMBA:** Our objection is that Roxanne
16 Ballard's testimony is absolutely and exclusively
17 hearsay.

18 **BY THE COURT:** Okay, that's not-- let's deal
19 with what I brought up first and then we will get
20 to the other. What I am saying is I am going to
21 quit at 5:30 if she is in mid-sentence because the
22 jury has got to get to this place by 6 o'clock.

23 **BY MR. HORAN:** I don't see any reason we--

24 **BY THE COURT:** Huh?

25 **BY MR. HORAN:** I don't see any reason why if I
26 lay my predicate, there is no reason to argue.

27 **BY THE COURT:** Well, I just want y'all to
28 understand where I am. Okay, now you can go on the
29 record.

1 BY MR. LUMUMBA: Let me say one other thing.
2 Are we on the record now?

3 BY THE COURT: Yeah.

4 BY MR. LUMUMBA: We are on the record, okay.

5 BY MR. HORAN: Let me just say one thing, and
6 I will finish up. We have had this twice before
7 the Court. The Court has ruled twice. If the DA's
8 office doesn't lay the predicate, you are going to
9 sustain the motion they have in limine.

10 BY THE COURT: I'm not going to have a hearing
11 outside the presence of the jury until such time as
12 she gets to the point of making that testimony as
13 to what she is going to make. Now you make that
14 objection then. I will determine then whether it
15 has to be done outside the presence of the jury.

16 BY MR. LUMUMBA: Well, I want to say this.
17 And I'm not trying to be critical but, and I don't
18 know; I have never heard so many leading questions
19 in my life.

20 BY THE COURT: Okay. Let me tell you where
21 I'm coming from. I understand, and I have
22 sustained most of your objections to those. In
23 relation to this witness, here is what 611 says.
24 It says ordinarily-- it says, "Leading questions
25 should not be used on the direct examination of a
26 witness except as may be necessary to develop his
27 testimony." And with this witness, it was
28 necessary to get him to testify to anything. You
29 know that; you had that much problem.

1 BY MR. LUMUMBA: Yeah, yeah--

2 BY THE COURT: --I'm not going to let them
3 testify, but they can ask some leading questions.

4 BY MR. LUMUMBA: Okay, I understand what you
5 are saying, and I understand 611. What I'm saying,
6 I can understand leading him to the point where you
7 put him in the context where he can then testify.
8 But see, what I, but they led him to state the
9 critical issue. See, the issue was what day is
10 it? This man has no idea what day we are talking
11 about, and for them to put the words in his mouth
12 is improper. See, what I was-- this is, this is
13 the way I think it would have been appropriate.
14 Let me just say I think it would have been
15 appropriate to lead him to the questions to know we
16 are talking about, you know, did you testify. I
17 don't have any problem with that. And then to lead
18 him all the way up to the point where you ask him,
19 Do you know what date it is? I mean, you know, I
20 mean if he doesn't know, Judge, it ain't a question
21 of leading in order to help--

22 BY THE COURT: --But you covered that on
23 cross-examination.

24 BY MR. HORAN: That's right.

25 BY THE COURT: I mean you got it in issue, you
26 know.

27 BY MR. LUMUMBA: Okay.

28 BY THE COURT: I wouldn't necessarily, I won't
29 say I argue with you, but we are past that point.

1 END BENCH CONFERENCE.

2 **BY THE COURT:** Who do you have next?

3 BY MR. HORAN: Roxanne Ballard.

4 **ROXANNE BALLARD,**

5 a white female called to testify as a witness by the State of
6 Mississippi, having first been duly sworn, testified as
7 follows, to-wit:

8 **BY THE COURT:** Have you been sworn?

9 BY THE WITNESS: Yes, sir.

10 **BY THE COURT:** Okay, state your name for the
11 record.

12 BY THE WITNESS: Roxanne Miller Ballard.

13 **BY THE COURT:** It'll, if you talk loud enough,
14 you don't have to lean too close to it, and it will
15 pick you up.

16 DIRECT EXAMINATION BY MR. HORAN:

17 Q. Ms. Ballard, what relationship, if any, are you to
18 Tom Tardy?

19 A. Tom Tardy.

20 Q. I mean what relationship, if any, were you to
21 Bertha Tardy?

22 A. She is my mother.

23 Q. And the Tardy Furniture Store there in Winona, are
24 you familiar with the operating procedures in that particular
25 store?

26 A. Yes, I am. I am very familiar with them.

27 Q. Did you ever work in the store?

28 A. Yes, I did, off and on my whole life and full time
29 for certain portions.

1 Q. I want to direct your attention to July the 16th,
2 1996. Did you have an occasion to be summonsed to the store
3 that particular day? Did you go down to the store that day?

4 A. No.

5 Q. Did you go the next day?

6 A. Not that I know of.

7 Q. Did you ever go down there for the purpose of
8 determining whether or not some business records could be
9 located?

10 A. Yes.

11 Q. And do you remember who did that, who requested
12 that you do that?

13 A. The investigators.

14 Q. Okay, would that be Jack Matthews?

15 A. Yes.

16 Q. And in that regard, would you tell the Court and
17 the jury what you did? What were you looking for in the
18 store? What documents were you looking for?

19 A. Several different things, the check-up sheets and
20 things like that. Different records they asked me for.

21 Q. Did you, were you able to locate any ledger sheets
22 or anything--

23 BY MR. LUMUMBA: Can we stop leading the
24 witness, please?

25 BY MR. HORAN:

26 Q. Were you able to locate any documents that they
27 requested?

28 A. Everything they requested I located.

29 Q. I want to hand you -- this is marked for

1 identification?

2 BY MR. LUMUMBA: Okay.

3 BY MR. HORAN:

4 Q. State's Exhibit number 65, and tell me whether or
5 not you can identify that particular document. And don't
6 testify as to what it is right now. Can you identify the
7 document?

8 A. Yes.

9 Q. Okay, all right. Now tell me what that document
10 is?

11 BY MR. LUMUMBA: Objection. I would like to
12 voir dire her.

13 BY MR. HORAN: I would be glad to let him do
14 that.

15 BY MR. LUMUMBA: Okay, I would like to voir
16 dire her on that, yes.

17 BY THE WITNESS:

18 A. Like to what?

19 BY THE COURT: He is going to ask you some
20 questions.

21 VOIR DIRE EXAMINATION BY MR. LUMUMBA:

22 Q. Good afternoon, Ms. Ballard.

23 A. Sure.

24 Q. Can I see that document for just a second, please.

25 A. (Witness hands document to Mr. Lumumba.)

26 Q. Okay, thank you, Ms. Ballard. Ms. Ballard, just a
27 few questions. Number one is prior to the 16th of July of
28 1996, had you actually ever seen that particular document at
29 any time before in your life?

1 A. Any time you went to Tardy Furniture Company you
2 saw this kind of document, not the same one that was there on
3 July the 16th.

4 Q. That's what my question was. You never saw that
5 document; right?

6 A. Not this one.

7 Q. Okay. When--

8 A. --It wouldn't have existed prior to that day.

9 Q. When was the last time that you worked at Tardy
10 Furniture Store, the last day that you worked prior to the
11 16th?

12 A. Prior to July 16th, 1996?

13 Q. Yes, ma'am.

14 A. June 15th, 1996.

15 Q. Okay, and were you working there-- so you had been
16 gone for, let me see, about a month; is that correct?

17 A. I hadn't been gone for a month. I had walked in
18 and out of that store all the time.

19 Q. Were you working there--

20 A. --Not employed there, no. I was not.

21 Q. Okay, and did you during that month do any of the
22 bookkeeping?

23 A. During which month?

24 Q. During the month of July or the end of June after
25 you no longer were working there?

26 A. I wrote receipts. I'm not sure if I actually did
27 the books for the month. I'm not positive about that. I
28 would have to go back and look at the records.

29 Q. Okay, now you didn't, you didn't, during that month

1 you were not the keeper of the records. You didn't keep the
2 records like, for instance, those kind of records, did you?

3 A. I didn't keep them, no.

4 Q. You were not the custodian of the records?

5 A. No.

6 Q. And you didn't create the record. You didn't
7 create that document?

8 A. This document on July 15th, no. I did not create
9 that document.

10 Q. And you weren't present when that document was
11 created?

12 A. No. If I had, I would be dead.

13 Q. That document was created on-- you don't know what
14 date that document--

15 A. --It was created on July 16th, 1996.

16 Q. Can I see it, please? Do you know of your own
17 personal knowledge what day that document was created?

18 A. It was created on July 16th--

19 Q. --The question is do you know-- were you there
20 when--

21 A. --That is the day the check-up sheet is always
22 done, the day after--

23 Q. --Excuse me a minute. Excuse me.

24 BY MR. HORAN: She has a right to explain her
25 answer, Your Honor.

26 BY MR. LUMUMBA: She has to answer my
27 question.

28 BY THE COURT: She has got to answer yes or no
29 first.

1 BY MR. LUMUMBA:

2 Q. The question is were you present when this document
3 was created?

4 A. No, I was not present when that document was
5 created.

6 Q. Okay. And it would also be safe to say that there
7 is no July 16th date anywhere on this document. Isn't that
8 true?

9 A. Yes.

10 Q. Yes, that is true?

11 A. Yes, that is true. You can't do a check-up sheet--

12 Q. --Excuse me--

13 BY MR. EVANS: --Your Honor, she is allowed,
14 should be allowed to finish her answer.

15 BY THE COURT: She can explain.

16 BY THE WITNESS: May I explain that?

17 BY THE COURT: Yes.

18 BY MR. LUMUMBA: She can only do it if you are
19 saying that now she has established--

20 BY MR. HORAN: --I'm not through examining
21 her.

22 BY MR. LUMUMBA: Excuse me, Judge, if she has
23 established that she is the custodian of the
24 document or someone, keeper of the records, or
25 somebody that can testify as to whether that is an
26 official business record. I don't have a problem
27 with her-- well, you see that ruling hasn't been
28 made.

29 BY THE COURT: Right, and we are not to that

1 point. You asked her the question. She is
2 entitled to explain her answer, and that may be
3 helpful to the Court on making that determination.
4 You may explain your answer.

5 BY THE WITNESS: Do I get to say what I was
6 going to say?

7 BY THE COURT: Uh-hum.

8 BY THE WITNESS: Is that the bottom line
9 here?

10 BY MR. HORAN: Yes. Explain.

11 BY THE WITNESS:

12 A. The check-up sheet that is dated, whether it was
13 the 15th or the--

14 BY MR. LUMUMBA: --Excuse me. She has
15 answered my question; right?

16 BY THE COURT: All right.

17 BY THE WITNESS: I forgot what the question
18 was now.

19 BY THE COURT: Well, let's let her finish.
20 You go ahead and answer, Ms. Ballard. That is my
21 ruling now. You can answer.

22 BY THE WITNESS: Answer? I'm--

23 BY THE COURT: You can finish your answer.
24 Whatever you were going to say, you can go ahead
25 and say.

26 BY THE WITNESS:

27 A. No, it does not say the 16th on it because the
28 check-up sheet is always done the morning after the date for
29 which those deposits are being made. So if it was receipts

1 for the 15th, they are deposited on the 16th, and the
2 check-up sheet is done first thing on the 16th.

3 Q. Thank you. What you are saying, you are basing
4 that upon what was being done when you were in the store; is
5 that correct?

6 A. What was done from 1941 on.

7 Q. Okay, when you were in the store?

8 A. Yes.

9 BY MR. LUMUMBA: Okay, thank you.

10 CONTINUED DIRECT EXAMINATION BY MR. HORAN:

11 Q. Ms. Ballard, would you give the jury the benefit
12 of your personal knowledge or your personal knowledge as to
13 the practice at Tardy Furniture regarding that particular
14 sheet?

15 A. Like?

16 BY MR. LUMUMBA: Judge, may we approach?

17 BY THE COURT: Uh-hum.

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
19 THE JURY AS FOLLOWS:)

20 BY MR. HORAN: I am asking her about her
21 personal knowledge.

22 BY THE COURT: I don't know what the objection
23 is yet.

24 BY MR. LUMUMBA: My objection is she has, she
25 has already said she has no personal knowledge of
26 that particular sheet.

27 BY THE COURT: She don't have to have that of
28 that particular sheet.

29 BY MR. LUMUMBA: Well, that is the question he

1 asked her. If he wants to ask her a question of
2 what is her personal knowledge of check-up sheets,
3 then--

4 BY MR. HORAN: --I will rephrase.

5 BY THE COURT: Well, I think he is trying to
6 do that--

7 BY MR. HORAN: I will rephrase.

8 BY THE COURT: --in relation to that check-up
9 sheet--

10 BY MR. LUMUMBA: --Okay, well, then why don't
11 you rule on my objection, Judge, because I really
12 think-- I have read the transcript, and I think
13 that is a serious problem at the last trial; I
14 really do.

15 BY MR. HORAN: I haven't even finished my
16 examination.

17 BY MR. LUMUMBA: Excuse me; excuse me. I'm
18 going to make sure I have all my objections in.

19 BY THE COURT: Oh, yeah. I want you to.

20 BY MR. LUMUMBA: I think that is critical.

21 BY THE COURT: I understood. I overrule that
22 objection at this time.

23 BY MR. LUMUMBA: Okay, good. Okay. And it's
24 a continuing objection.

25 BY THE COURT: Okay.

26 END BENCH CONFERENCE.

27 (NOTE: Witness started crying during the
28 bench conference.)

29 CONTINUING DIRECT EXAMINATION BY MR. HORAN:

1 Q. Ms. Ballard, what is that sheet that you have
2 before you?

3 A. (Pause.) I'm sorry.

4 Q. I understand that you don't, you didn't prepare
5 that, that particular sheet?

6 A. No.

7 Q. But you are familiar with what that sheet is
8 though. Is that--

9 A. Yes. Yes.

10 Q. What is that sheet?

11 A. It's a daily check-up sheet.

12 Q. What is the purpose as far as Tardy Furniture
13 Store, what is the purpose of that particular document?

14 A. There are several purposes. The first section at
15 the top-- nobody can see this. How do they know what I'm
16 talking about?

17 Q. Just talk about it, and we will go from there.

18 A. Okay. The first section at the top is where you
19 list the sales for the previous day.

20 Q. Is that the same type of document that was in the
21 store, kept in the store on a daily basis when you worked in
22 Tardy Furniture Store?

23 A. Yes. Yes. It didn't change--

24 Q. --And was that the same type of document--

25 A. They did the same thing day in and day out. They
26 were in a serious rut that they had been in all my life.
27 They always did the same thing the same way. The first
28 section records the sales for the day. That is listed at the
29 top, and it shows the cash sales, the amount received on

1 accounts, and any other collections for the prior day, and
2 then the deposit for the day. Then the section below is used
3 to reconcile the balance of the drawer. And then the back is
4 used to record any sales for the day, new sales.

5 Q. Do you recognize anybody's handwriting on that
6 particular document?

7 A. Yes. Carmen Rigby's.

8 Q. Have you seen her handwriting on similar documents
9 to that in the past?

10 A. For 20 years.

11 Q. For 20 years you have seen her make out those
12 ledger sheets?

13 A. (Witness nods her head.)

14 Q. Was she the custodian of those records?

15 A. Yes.

16 Q. Are you familiar with that particular document?

17 A. Yes.

18 Q. Do you know what the purpose of that document is?

19 A. Yes.

20 Q. Are you familiar with the fact of whether or not
21 that document was kept in that store on a daily basis?

22 A. Yes, but not only that, there is probably from 1941
23 on that is probably still in the attic somewhere.

24 Q. And in fact, you have on your person right now
25 other documents, ledger sheets that are similar to that; is
26 that right?

27 A. Not on my person. They are in the other room.

28 Q. I mean but you--

29 A. --I brought them.

1 Q. Now I want you to look at the very bottom of that
2 document, and there is a number down there 300. What does
3 that indicate?

4 A. That's the normal balance of the cash drawer.
5 Normal balance is an accounting term. It's not--

6 BY MR. LUMUMBA: --Excuse me, Judge. I don't
7 want to interrupt any more, but have you ruled?

8 BY THE COURT: No, I have not ruled. Are you
9 going to admit it?

10 BY MR. HORAN: It's not offered.

11 BY MR. LUMUMBA: Okay, but now what I'm
12 saying--

13 BY THE COURT: --She can't testify to it until
14 you offer it.

15 BY MR. LUMUMBA: Okay.

16 BY MR. HORAN: Okay, I move for introduction
17 of it.

18 BY MR. LUMUMBA: Okay, and, of course, we
19 would respectfully, respectfully object just on
20 legal grounds because we think it is inadmissible.
21 And I also, I hate to ask to do this, but there is
22 something I have to do that I think we need to
23 approach the bench on.

24 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
25 THE JURY AS FOLLOWS:)

26 BY MR. LUMUMBA: I have got to ask for a
27 mistrial. You know, we-- I mean right or wrong,
28 but to me first of all, I think that we raised this
29 issue before. The prosecution certainly should

1 have known that that was an inadmissible document.
2 She is no longer the keeper of the records. I have
3 never seen a situation where somebody who used to
4 keep the records comes in and authenticates a
5 business record. I have never seen that happen.
6 They have to be the keeper of the records,
7 custodian of the records at the time. And then
8 what has happened, this has put us in a position
9 where a woman is on the stand, and I can understand
10 it. I would probably be doing the same thing,
11 crying and really to me, you know, creating a very
12 bad situation for us in front of this jury. And
13 so, you know, based upon-- and, you know, that is
14 the ultimate expression of emotionalism, and I
15 think that the error is in the prosecution bringing
16 this back in here in the first place, bringing her
17 here to justify the document. I mean, you know--

18 **BY THE COURT:** Of course, if I granted a
19 mistrial every time somebody cried, I would be out
20 of court all the time.

21 **BY MR. LUMUMBA:** Yeah, I know; I know, but
22 what I'm saying is this could have been avoided if
23 they wouldn't have done that.

24 **BY THE COURT:** Well, I think they feel this is
25 necessary to prove an essential element of their
26 case, so they have got-- you know, I'm not speaking
27 for them. That would be my assumption. I assume
28 that is your assumption too.

29 **BY MR. LUMUMBA:** Right. Okay, well, let me

1 say this. My first motion is to decide right now
2 whether she is going to be admitted to testify. I
3 don't want to keep having to jump up. I am telling
4 whoever has got to read this record that is the
5 only reason I'm not going to object any more.

6 **BY THE COURT:** First, how do you state that
7 it's admissible?

8 **BY MR. HORAN:** It's admissible as a common,
9 routine habit and practice that they did in the
10 store. She says she has been familiar with it for
11 twenty years. She does not have to be the
12 custodian of the records. She is familiar with the
13 handwriting. That is a regularly kept business
14 document. It is just part of it. It is whether or
15 not they keep that particular document, routine--
16 habit, routine and practice that they do. And she
17 has testified basically that's what they do.

18 **BY THE COURT:** And she has testified that she
19 is familiar with it, and under 406 I'm going to
20 allow it to come in.

21 **BY MR. LUMUMBA:** Okay. Well, the second thing
22 I'm doing I'm just making a Motion for a Mistrial
23 on the grounds stated already.

24 **BY THE COURT:** That Motion is overruled.

25 **END BENCH CONFERENCE.**

26 **BY MR. HORAN:** Your Honor, may I have the
27 exhibit marked.

28 (DAILY LEDGER SHEET PREVIOUSLY MARKED AS
29 STATE'S EXHIBIT S-65 FOR IDENTIFICATION WAS NOW

1 RECEIVED IN EVIDENCE.)

2 BY MR. HORAN:

3 Q. Ms. Ballard, I want to switch gears for just a
4 second. You said that that furniture store had been open,
5 operating since the 40's; is that right?

6 A. 1941.

7 Q. Did you actually work in that store for a period of
8 time?

9 A. Yes.

10 Q. And do you have any background in accounting
11 whatsoever?

12 A. I have a Master's in Accounting from Ole Miss.

13 Q. And while you were working in the store, did you
14 become familiar with these particular documents?

15 A. Yes.

16 Q. And other documents in the store?

17 A. Yes.

18 Q. What time did they open the store every morning?

19 A. 9 o'clock.

20 Q. 9 o'clock. And were they open every day of the
21 week other than Sunday?

22 A. Uh-hum.

23 Q. What time did they close on Wednesday? Some
24 witnesses in Winona I know close--

25 A. --close at 12 noon on Wednesday.

26 Q. Are y'all still operating that store now?

27 A. Yes.

28 Q. I want to hand you State's Exhibit 65, and you can
29 remain seated, and if you would, is there any indication

1 after you look at that document, can you-- is there any
2 indication on there what amount of money should have been in
3 the cash drawer?

4 BY THE COURT: Excuse me. Did you offer it?

5 BY MR. HORAN: Yes, sir.

6 BY THE COURT: Has it been marked?

7 BY MR. HORAN: Yes, sir.

8 BY THE COURT: All right.

9 BY MR. HORAN:

10 Q. What amount of money should have been in the cash
11 drawer when they opened up on July the 16th, 1996?

12 A. It should have been \$300.00, but it was \$400.00.

13 Q. Does that document tell you that there was more
14 than \$300.00 in that cash drawer?

15 A. Yes. It is \$400.00.

16 Q. How do you know that?

17 A. Because of the way they list the contents of the
18 drawer on the right hand side.

19 Q. Okay, and what tells you when they-- if you would,
20 turn toward the jury and explain every part of that
21 particular document, and I don't think you want to get up.

22 A. There is not a board or anything that I--

23 Q. I will just--

24 A. --can write on.

25 Q. Why don't you, if you want to stand, you can.

26 A. I don't think I can stand up.

27 Q. I will hold it for you. If you would, do you see
28 Ms. Rigby's signature?

29 A. It's right here.

1 Q. Okay, it says "Carmen."

2 A. Uh-hum.

3 Q. And you stated earlier that the date is 7/15.

4 Okay, what is this space out here for?

5 A. Right here?

6 Q. Right.

7 A. It's where they listed the cash, the contents of
8 the drawer, the currency at first and then the coins in order
9 the way it goes through the drawer.

10 Q. And would you start at the top of that listing and
11 tell us what each one of those things--

12 A. Represent?

13 Q. Represent; that's right.

14 A. The top number says minus 100. And the reason it
15 says minus 100 is because money was in the cash drawer that
16 did not belong normally in the cash drawer. In accounting
17 there is a thing called normal balance, and a normal balance
18 is the balance that is supposed to be in an account or a fund
19 or a drawer, whatever you are referring to. The normal
20 balance for the cash drawer is \$300.00. But because the late
21 charges that were always kept in a separate little box that
22 is kind of, you know, a little flimsy cardboard box. And the
23 late charges are always kept there, and a list is kept of
24 every late charge that is paid. Then when it builds up to be
25 an amount of money they didn't think they wanted out of the
26 drawer, they would stick the money in the drawer. And on
27 that particular date Carmen had obviously put the hundred
28 dollars from the late charge box into the drawer, and there
29 was a slip of paper that you would put in there to say late

1 charges or whatever inappropriate cash was in the drawer so
2 that you could know when you were reconciling the drawer what
3 to subtract.

4 Q. And the next number 260; what does that identify or
5 represent?

6 A. That represents the currency that was in one slot
7 of the drawer. It could have been tens, twenties, or
8 something larger if it were there.

9 Q. And the next one, 95?

10 A. That is fives, and then 34 is ones. Then 3.75,
11 that is quarters. And then dimes, then nickels and then
12 pennies, 35 pennies.

13 Q. Now I notice on here that there is \$300.00 at the
14 very bottom of that, of this document.

15 A. Right.

16 Q. This ledger sheet. And I notice that it appears to
17 have been changed in some way. What does that represent?

18 A. Well, this sheet wasn't changed.

19 Q. Right. I know the sheet wasn't changed, but the
20 form was changed.

21 A. The form was changed, gosh, I don't know, probably
22 ten or fifteen years ago - I don't know - off the top of my
23 head. A long time ago the cash drawer used to only have a
24 \$200.00 normal balance, but you know, things--

25 Q. Inflation?

26 A. Yeah. Times change. And so they had to increase
27 it to \$300.00. It was so long ago, I don't remember when.

28 Q. But you are familiar with the fact that they did
29 make that change?

1 A. Right. And they just kept the same form and used,
2 the original was altered, and then the original was turned in
3 to the printers, and then the printers reproduced it with 300
4 instead of 200.

5 Q. And you have identified this writing as Ms. Rigby's
6 writing?

7 A. Yes.

8 BY MR. HORAN: I would like to publish this to
9 the jury.

10 BY THE COURT: It has been admitted. You can
11 do it.

12 (State's Exhibit S-65 was passed to the jury.)

13 BY MR. HORAN:

14 Q. Ms. Ballard, you testified about the cash drawer.
15 Where is that located in the store? Where would that money
16 have been kept in that store?

17 A. There is just a wooden drawer that is part of the
18 office structure.

19 Q. Okay, I want to show you what has been marked for
20 identification and also been admitted into evidence as
21 State's Exhibit number 13. Is that the drawer you are making
22 reference to?

23 A. Correct.

24 Q. Do you see anything in that drawer that would, any
25 document or anything that would be the documentation with
26 reference to the extra one hundred dollars?

27 A. You can't tell it real well from this picture, but
28 that is a Serta logo that is in this left hand pocket right
29 here.

1 Q. Okay.

2 A. And that is the little piece of paper that Carmen
3 had written "Late charges \$100.00" on, and the bills are all
4 missing.

5 Q. Okay, normally--

6 A. --the currency.

7 Q. The normal routine habit and practice would be that
8 bills would have been in that drawer?

9 A. Uh-hum. That is the key to the back door. That's
10 the key. That's the extra little key.

11 Q. Now that money drawer, what did they do with it at
12 the close of every day? What was the routine practice?

13 A. That metal piece that is inside there that is
14 actually where the money fits just lifts up out of the
15 drawer, and they would put it and the accounts receivable
16 ledger and the receipt book and the deposit bag in the safe
17 at night and then lock the safe.

18 Q. Okay, and in the morning what would they do after
19 they opened up? What would be the routine habit and
20 practice?

21 A. Mama would-- well, assuming Mama opened up which
22 she did most of the time unless she was out of town-- Mama
23 would unlock the front door and go in and turn the first
24 lights on that are on that side of building and then go back
25 to the back and open the safe and take out those same things
26 I just named, and take them back up to the office and put the
27 cash drawer back inside.

28 Q. And after she opened the safe, what was their habit
29 and practice regarding the safe? Did they keep it closed or

1 keep it locked during the day?

2 A. Not, no--

3 BY MR. LUMUMBA: --Judge. Well, I have no
4 objection to that question.

5 BY MR. HORAN:

6 Q. Okay, you can answer.

7 A. No, they did not keep it closed during the day, not
8 locked.

9 BY MR. HORAN: If the Court will indulge me
10 just a minute.

11 BY MR. HORAN:

12 Q. I hand you what has been marked for identification
13 purposes as State's Exhibit number 63.

14 (Exhibit S-63 shown to Counsel opposite.)

15 BY MR. LUMUMBA: Can we approach on this?

16 BY THE COURT: Uh-hum.

17 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
18 THE JURY AS FOLLOWS:)

19 BY MR. LUMUMBA: Now why is this relevant?
20 What is it going to be connected to?

21 BY MR. HORAN: Your Honor, it was found at the
22 store. The proof is going to be it was found in
23 the office, in the back of the office. She can
24 identify that as being her mother's handwriting.

25 BY MR. LUMUMBA: What does this prove--

26 BY MR. HORAN: --It's proof as to the
27 relationship between the Defendant.

28 BY MR. EVANS: Plus it is going to tie in
29 later with part of his statement.

1 BY MR. LUMUMBA: Pardon?

2 BY MR. EVANS: Plus it is going to tie in
3 later with part of his statement.

4 BY THE COURT: Yeah, I think it has some
5 relevance. I can see that. If it was found at the
6 store, I see the relevance to it.

7 BY MR. LUMUMBA: Well. Objection.

8 BY THE COURT: The objection is overruled.

9 END BENCH CONFERENCE.

10 BY MR. HORAN: May I approach, Your Honor?

11 BY MR. HORAN:

12 Q. I hand you what has been marked for identification
13 purposes as State's Exhibit number 63. Can you identify the
14 handwriting on that exhibit?

15 A. Yes. It's my mother's.

16 Q. Did you ever see this check in the store after July
17 the 16th, 1996?

18 A. Yes, I did.

19 Q. Where did you see it?

20 A. On my mother's desk right by the phone in the very
21 back.

22 Q. Is that in the back office?

23 A. Back office.

24 Q. Next to the telephone?

25 A. Right, with the time card lying right there
26 together.

27 Q. Is this check, is it materially in the same
28 condition today as it was?

29 A. Yeah.

1 Q. Do you remember what day you went in the store?

2 A. I don't have any idea.

3 Q. A few days after?

4 A. I'm sorry; I don't know what day. It was--

5 Q. That's fine.

6 BY MR. HORAN: I move for introduction of this
7 document.

8 BY THE COURT: Same objection?

9 BY MR. LUMUMBA: Yes, sir.

10 BY THE COURT: Overruled.

11 (ORIGINAL CHECK DATED 7/5/96 TO CURTIS FLOWERS
12 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-63 FOR
13 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

14 BY MR. HORAN:

15 Q. What was-- I ask you if you can identify a couple
16 of pictures on the outside of the store. If you could, Ms.
17 Ballard, you may or may not be able to do this, but if you
18 can, do you see the Coast to Coast building in that
19 photograph?

20 BY MR. LUMUMBA: Which exhibit?

21 BY MR. HORAN: I'm sorry.

22 BY THE WITNESS:

23 A. Yes, it's right there. Huh?

24 BY MR. HORAN: That is D-12.

25 A. It's right here.

26 Q. Okay, how far in your best estimate, how far is the
27 Coast to Coast front door from the front door--

28 A. --Don't ask me. I can't, I don't do distance very
29 well. I'm not sure.

1 Q. Right up the street?

2 A. Yeah, it's just, I mean it's on the other end-- I
3 mean on this end of the other block. It's not far at all.

4 Q. Half a block away?

5 A. Right. Well, a block and a half or half a block.

6 BY MR. HORAN: I tender.

7 BY THE COURT: Let me see y'all just a second.

8 (CONFERENCE AT THE BENCH OUT OF THE HEARING
9 THE JURY AS FOLLOWS:)

10 BY THE COURT: In light of what I said, how
11 about, do you want to do the cross in the morning?

12 BY MR. HORAN: Judge, we are trying to get her
13 off the stand.

14 BY THE COURT: I have got, I have already
15 made-- you should have put her on earlier. I have
16 got some arrangements made for the jury.

17 BY MR. LUMUMBA: Well, if we have anything to
18 ask her at all, it won't take more than five
19 minutes.

20 BY MR. EVANS: That's what I figured. They
21 are going to be able to finish her before 5:30.

22 BY THE COURT: You can finish her before then?

23 BY MR. LUMUMBA: Oh, yeah.

24 BY THE COURT: Oh, in that case, be my guest.

25 END BENCH CONFERENCE

26 BY MR. LUMUMBA: I have no--

27 BY MR. HORAN: --Let me ask one question I
28 meant to ask. Can I, Judge, just one question?

29 CONTINUED DIRECT EXAMINATION BY MR. HORAN:

1 Q. On that date on July the 16th, 1994, [sic] who were
2 the employees at Tardy Furniture?

3 BY MR. LUMUMBA: I'm sorry, 6.

4 BY MR. HORAN:

5 Q. I mean '96. I'm sorry. It has been a long day,
6 Judge. July the 16th, 1996, who were the employees at Tardy
7 Furniture?

8 BY MR. LUMUMBA: If she has personal--

9 BY THE COURT: --If she knows.

10 BY MR. HORAN:

11 Q. Did you have personal knowledge of that?

12 A. Yes.

13 BY MR. LUMUMBA: Firsthand knowledge.

14 BY THE WITNESS:

15 A. Yes, because I saw their time cards. I mean they
16 are in evidence or somewhere.

17 BY MR. LUMUMBA: Well, no. If it is based on
18 time cards, we need the time cards.

19 BY THE COURT: That would be hearsay.

20 BY MR. HORAN: Okay, nothing further.

21 BY MR. LUMUMBA: I have no questions of this
22 witness.

23 BY THE COURT: Okay. Ms. Ballard -- is she
24 finally excused?

25 BY MR. HORAN: She is.

26 BY THE COURT: Ms. Ballard, you are free to
27 go.

28 WITNESS EXCUSED.

29 BY THE COURT: Okay. I have got y'all in

1 another restaurant tonight, and they have got
2 reservations for you. So we are going to quit now
3 so y'all can get there. We will start back in the
4 morning at 9 o'clock. Now y'all remember all the
5 instructions I have given you every night, don't
6 you? You can't, still can't talk about it amongst
7 yourselves. You can't form any opinions and can't
8 let anybody else talk to you or let any news media
9 of any kind be in contact with you.

10 See y'all in the morning.

11 COURT WAS RECESSED FOR THE DAY AT 5:20 P.M. ON
12 MARCH 25, 1999.

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1 (COURT WAS REOPENED ON FRIDAY, MARCH 26, 1999,
2 AT 9:00 A.M. WITH THE COURT, ALL COUNSEL WITH THE EXCEPTION
3 OF MR. FREELON, AND THE DEFENDANT PRESENT IN OPEN COURT:)

4 BY THE COURT: Y'all ready?

5 BY MR. LUMUMBA: One second.

6 BY THE COURT: Who will you have first?

7 BY MR. EVANS: Patricia Hollman.

8 BY THE COURT: Have you been sworn in?

9 BY THE WITNESS: No, sir.

10 BY THE COURT: Raise your right hand. (Witness
11 sworn by the Court.) Have a seat right there, please.

12 JURY ENTERS THE COURTROOM.

13 BY THE COURT: Good morning.

14 BY THE JURY: Good morning.

15 PATRICIA ANN HOLLMAN,

16 a black female called to testify as a witness by the State of
17 Mississippi, having first been duly sworn, testified as
18 follows, to-wit:

19 BY THE COURT: State your name for the record,
20 please, ma'am.

21 BY THE WITNESS: My name is Patricia Ann
22 Hollman.

23 DIRECT EXAMINATION BY MR. EVANS:

24 Q. Ms. Hollman, how are you doing this morning?

25 A. All right.

26 Q. Ms. Hollman, I want to direct your attention back
27 to July the 16th of 1996. Do you remember the day that the
28 people were killed at Tardy Furniture there in Winona?

29 A. Yes, sir.

1 Q. To start with, do you know a person by the name of
2 Curtis Flowers?

3 A. Yes, sir.

4 Q. How long have you known Curtis Flowers?

5 A. For a while. Every since-- I have been knowing him
6 for a long time, but I been knowing him real good every since
7 I moved to 700B McNutt Drive.

8 Q. Was that close to where he was living?

9 A. Yes, it was.

10 Q. Who was he living with?

11 A. Connie Moore.

12 Q. Can you describe for the ladies and gentlemen of
13 the jury how close you actually lived to where him and Connie
14 Moore lived?

15 A. Yes. Next door, about ten to within twenty feet
16 mostly. It might, the exact maybe ten feet. We walking
17 distance.

18 Q. So y'all's houses were almost touching they were so
19 close?

20 A. Yes, sir.

21 Q. I want to direct your attention back to the day
22 that the murders occurred and ask you if you saw Curtis
23 Flowers that morning?

24 A. Yes, sir.

25 Q. Now the first time you saw him that morning
26 approximately what time was it?

27 A. The first time I seen him that morning was when I
28 was on my morning walk, and he was just sitting on the
29 porch. I don't know if it was a cigarette or something, but

1 I guess it was a cigarette and uh, when I was walking that
2 morning.

3 Q. Okay. Did you see him later that morning?

4 A. Yes.

5 Q. About what time was that?

6 A. It was about, no later than 7:30. It could have
7 been earlier than 7:30. The time was-- I wasn't paying no
8 attention to the time then. But back then I was on my daily
9 duty, and by that time I always sweep my porch off between
10 the 7 o'clock range, my back porch there in conjunction to
11 their living room right there.

12 Q. All right, what was he doing at that time?

13 A. He was coming across the hill going in the house.

14 Q. Okay, so he had been somewhere at that point and
15 was coming back?

16 A. Yes, sir.

17 Q. What was the next time you saw him that morning?

18 A. A little before dinner.

19 Q. Okay. At the time you saw him around 7:00 or 7:30,
20 what was he wearing?

21 A. He was wearing some black nylon pants, a white
22 shirt with some writing on it and some Grant Hill tennis
23 shoes.

24 Q. You say Grant Hill. How do you know what type of
25 tennis shoes he was wearing?

26 A. Because they was just, they hadn't been out too
27 long, and they was popular and my boys wanted some. And at
28 that particular time they the one told me that they wanted
29 some of the Filas that he had on. He done worn them before,

1 so that's how I know that they was Grant Hill Fila tennis
2 shoes.

3 Q. Who had worn them before?

4 A. Curtis.

5 Q. How long had you been seeing Curtis Flowers wearing
6 these Fila Grant Hill tennis shoes?

7 A. Well, I don't know exact.

8 Q. Just for a while; is that right?

9 A. Uh-hum. Well, I have seen them before.

10 Q. Okay.

11 BY MR. EVANS: Your Honor, may I have this--
12 well, it is already marked for identification.

13 BY THE COURT: I think it is in evidence.
14 It's not?

15 BY MR. EVANS: This one is not. The other
16 one.

17 BY THE COURT: Oh, okay.

18 BY MR. EVANS:

19 Q. I will hand you Exhibit 90 for identification and
20 ask you to examine this exhibit if you would, please,
21 ma'am.

22 A. (Witness complies.) These right here are the Grant
23 Hills II, but they are Grant Hill Fila tennis shoes.

24 Q. Okay, so that is the type, not these shoes, but the
25 type shoes that you saw the Defendant wearing on the morning
26 of the murders?

27 A. Yes, sir.

28 BY MR. EVANS: Your Honor, I offer these into
29 evidence at this time. Not that they are the shoes

1 he was wearing, but they are the same type of shoes
2 that he was wearing.

3 BY MR. LUMUMBA: Okay. May I see it, please?
4 (Pause while Mr. Lumumba examines the exhibit.) I
5 have no objection to that if that's her testimony.

6 BY THE COURT: Okay. Let them be marked. Do
7 you want the box marked?

8 BY MR. EVANS: It would probably be easier
9 just to keep them in the box, Your Honor.

10 BY THE COURT: We will mark that as a
11 collective exhibit.

12 (FILA SHOE BOX CONTAINING TENNIS SHOES
13 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-90 FOR
14 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

15 BY MR. EVANS: May I pass these to the jury
16 while I continue, Your Honor?

17 BY THE COURT: They have been admitted. You
18 can.

19 (Exhibit S-90 was passed to the jury.)

20 BY MR. EVANS:

21 Q. Ms. Hollman, back in July of '96 what was your
22 address?

23 A. 700 B McNutt Drive, Winona, Mississippi.

24 Q. McNutt Drive?

25 A. Yes.

26 Q. And do you know what the address that Connie Moore
27 and Curtis Flowers were living at?

28 A. 702 A McNutt Drive, Winona, Mississippi.

29 Q. 702 A?

1 A. Uh-hum.

2 Q. What was your connection or relationship with the
3 Defendant and Connie Moore at that time?

4 A. Just friends.

5 Q. Did you know them and their children?

6 A. Yes.

7 Q. Did you have any special relationship with one of
8 Connie Moore's children?

9 A. Yes, the baby.

10 Q. And what was that special relationship?

11 A. Well, her godmother.

12 Q. You were the godmother of one of Connie Moore's
13 children?

14 A. Uh-hum.

15 Q. How many times did you see the Defendant leave his
16 house that morning?

17 A. How many times I see him leave?

18 Q. Right.

19 A. Twice.

20 Q. And give me those times as best you can.

21 A. The first time, the first time that I saw him left,
22 let me see. The first time was when, when he was coming in
23 over the hill.

24 Q. Okay.

25 BY MR. LUMUMBA: Uh, I'm sorry.

26 BY MR. EVANS:

27 Q. You may continue.

28 A. And the second time was when he was leaving,
29 exiting the house.

1 Q. And about what time was he exiting the house?

2 A. Well, I don't know the exact time. I just know
3 when he came back-- when he was, when he came in, he didn't
4 stay that long; he left. He didn't stay, he didn't even stay
5 20 minutes.

6 Q. All right, can you give me a general idea of what
7 time it was that he left then?

8 A. No, I cannot.

9 Q. Which direction did he leave in?

10 A. Going over the hill, and that will be south.

11 Q. Headed south. All right, from where his house was
12 located at that time, which side of Highway 51 was his house
13 on?

14 A. On the left.

15 Q. Okay, would that be the west side?

16 A. Uh-hum.

17 Q. Okay, I need you to answer out loud so that that
18 mike will--

19 A. Yes.

20 Q. --pick it up. And from his house, where was the--
21 are you familiar with the factory there in Winona by the name
22 of Angelica?

23 A. Yes.

24 Q. From his house, which direction was Angelica?

25 A. North, northeast.

26 Q. North?

27 A. From which way? The short cut or the highway? I
28 don't understand the question.

29 Q. From where his house was.

1 A. Uh-hum.

2 Q. Was his-- what town direction was that located?

3 A. (No response.)

4 Q. Do you know which, for sure which direction was
5 north and south?

6 A. (No response.)

7 Q. Just describe to me how you would get from his
8 house to Angelica?

9 A. Oh, okay.

10 Q. That might be the easiest.

11 A. Well, it's two different ways you can go.

12 Q. All right, tell me both of them.

13 A. Okay, the first way you can go out, get on Cemetery
14 Lane, go to Cemetery Lane and take a right, get on Powell
15 Street, get down to the end of Powell Street and take another
16 right. And when you get to 407 exit, you can take a left or
17 you can keep straight.

18 Q. All right. Are you familiar with where the
19 intersection is there at Highway 51 that cuts through to
20 Angelica's?

21 A. Yes.

22 Q. I believe it's called Angelica Drive or Donnager
23 Drive?

24 A. Yes. Uh-hum.

25 Q. Approximately how long would it take to walk from
26 his house to that intersection?

27 A. I don't know.

28 Q. Okay. Did you see him come back to his house after
29 the second time he left?

1 A. No, I did not.

2 Q. Later that day?

3 A. No, I did not.

4 Q. Okay. And these Fila Grant Hill tennis shoes that
5 he wore, was there anything unusual about them, the way he
6 wore the laces or anything else?

7 A. Yes, sir.

8 Q. Describe to the ladies and gentlemen of the jury
9 that.

10 A. It's two ways you can lace up tennis shoes, and
11 it's the top way like just going from the top. And it's
12 another way you can lace them up like going in from the
13 sides, sort of be like a checkered thing, and the string
14 will hang off from the top when you get up to the top of the
15 shoe.

16 Q. Which way did he wear his Fila Grant Hills?

17 A. With the string hanging to the side.

18 BY MR. EVANS: Tender the witness, Your
19 Honor. Give me just a second.

20 (State's Counsel confer briefly.)

21 BY MR. EVANS: That's all.

22 BY MR. LUMUMBA: Good morning, ladies and
23 gentlemen of the jury.

24 BY THE JURY: Good morning.

25 CROSS-EXAMINATION BY MR. LUMUMBA:

26 Q. Good morning, Ms. Hollman. How are you doing?

27 A. Good morning.

28 Q. Okay, doing good. Ms. Hollman, I just have a few
29 questions to ask you really. You ever see Mr. Curtis Flowers

1 with any kind of gun or anything like that that day?

2 A. No, sir.

3 Q. Did you ever see him with any kind of blood on him
4 or anything like that that day?

5 A. No, sir.

6 Q. Let me ask you a couple of things here. Just one
7 thing they asked you about in some Grant Hill Filas, and I
8 just have a couple of simple questions.

9 (Mr. Freelon enters the courtroom.)

10 Q. You had indicated that at the time that your
11 children had wanted to get some of these because these were
12 new shoes; the things had just come out?

13 A. Yes, sir.

14 Q. Just come out, okay. And that was at the time that
15 you saw Curtis with Filas also; is that correct?

16 A. Uh-hum.

17 Q. When your children would talk about them and they
18 were new shoes that had just come out; is that right?

19 A. Uh-hum.

20 **BY THE COURT:** You have to answer out, Ms.

21 Hollman.

22 **BY THE WITNESS:**

23 A. Yes, sir.

24 Q. Okay, now let's see if I can find something right
25 here. (Pause while Counsel looking at shoes.) Well, it
26 seems like the only thing I can find is on these boxes. But
27 look on this box here-- is this an exhibit already, I
28 believe? It is State Exhibit number 90, okay. This box here
29 says M Grant Hill Olympic; right?

1 A. Uh-hum.

2 Q. That's what it says; right?

3 A. Uh-hum.

4 Q. Okay, you have to say yes or no.

5 A. Yes, sir.

6 Q. Okay. And that is the box that Counsel showed you
7 that had these shoes in it. They look kind of new actually,
8 don't they?

9 A. Yes. Yes, sir.

10 Q. Okay. Okay, then is this the-- see if I am right.
11 This box here is S-61. That's what that is right there; see?

12 A. Uh-hum.

13 Q. S-61, and this box seems to have some little powder
14 or something on it? Do you see that?

15 A. Uh-hum.

16 Q. I'm sorry; you have got to say yes or no.

17 A. Yes, sir.

18 Q. So she can pick it up. That box here says Grant
19 Hill II MID; right?

20 A. Uh-hum. Yes, sir.

21 Q. So they have two different things on the box;
22 right?

23 A. Uh-hum.

24 Q. Now the other thing is as far as the pants that you
25 said you saw Mr. Flowers with on that day, you said these
26 were some black pants. Actually what you, I think you
27 described them before as kind of like black silk, what they
28 call warm up pants or jogging pants?

29 A. Wind suit, wind suit pants.

1 Q. That's right. That's what you said. Wind suit
2 pants, right. So these weren't dress pants, were they?

3 A. Uh-uh.

4 Q. Huh?

5 A. No, sir.

6 Q. And secondly, certainly they weren't long white
7 pants?

8 A. No, sir.

9 Q. And the other thing is that you didn't see him in a
10 black, black and gray sweater?

11 A. No, sir.

12 Q. You didn't see that. What you said you saw him in
13 was a T-shirt; is that correct?

14 A. That's right. Yes, sir.

15 Q. Okay, and the other thing that I would like to ask
16 you about is that-- I don't know; are you pretty decent at
17 looking at maps? Sometimes?

18 A. Yes, sir.

19 Q. Okay. Now I see on this map, which is Exhibit D-7,
20 up here is the place called-- well, let me see. I'm looking
21 for McNutt. Here is McNutt right here. Is that correct?

22 A. Yes, sir.

23 Q. And then we look for?

24 A. Cemetery.

25 Q. Okay, look for the Cemetery. Okay, now. Okay, now
26 let me ask you this. When you saw Mr., Mr. Flowers from
27 this, where it says McNutt, show which me which direction he
28 was going on this map.

29 A. He was going.

1 Q. Move your finger in that direction, and I'm going
2 to tell the ladies and gentlemen what you are doing.

3 A. (No response.)

4 Q. When he left your sight where, which direction did
5 he leave in?

6 A. I can't show you on this one because Dennis Street
7 is going that way. Cemetery Lane is in front, is in front of
8 the house. It's not-- it's when you go out to the road, and
9 then you make a -- I can't show you on this one.

10 Q. Well, let me just ask, be a little simpler with
11 it. You are aware of the fact that Mr. Flowers has relatives
12 that live on Dennis Street; is that correct?

13 A. Yeah, Dennis.

14 Q. Yeah. He has relatives also-- where does his
15 mother live at? Do you remember? What street does she live
16 on?

17 A. I think it's--

18 Q. --Is she on Cade Street or somewhere around there?
19 Are you sure now?

20 A. Harper and Cade, I'm not familiar with all the way
21 up in there that much. It's in that area.

22 Q. Okay, but he has relatives that live in that area;
23 is that correct?

24 A. Uh-hum.

25 Q. Based upon the direction-- you really don't know
26 where he was going, do you?

27 A. That's right; I don't.

28 Q. Okay, and based upon the direction that you saw him
29 walking, he could have been going to one of those relative's

1 house; isn't that true?

2 A. True.

3 Q. Okay, that was in the same general direction; is
4 that correct?

5 A. True.

6 Q. And actually, he has quite a few relatives that
7 live up there in this vicinity. Isn't that true?

8 A. True.

9 Q. Okay. Okay, now the other thing is that, if I'm
10 not mistaken, Ms. Hollman, there was a time when you
11 testified which was...

12 (Pause while Defense Counsel confer, and then
13 Mr. Freelon leaves the courtroom.)

14 BY MR. LUMUMBA:

15 Q. Okay, and I'm going to show you a transcript of a
16 hearing that you testified in earlier, and I'm going to ask
17 you to look at it with me on page 555 and 5-- make sure I
18 have got that right. Excuse me, 565 and 566. Here is 565,
19 and you notice that at the top your name is there, Patricia
20 Hollman; is that correct?

21 A. Uh-hum.

22 Q. Would that be yes?

23 A. Yes.

24 Q. Okay. And would you also notice that, okay, on
25 these particular pages you said that, "Okay, had no reason"
26 -- well, let me just ask you this question. Okay, they
27 asked you a question. They said, "Okay, had no reason to
28 keep up with the time at that point?" And that was when you
29 were describing about 15 minutes to 5:00 or 10 minutes to

1 5:00; is that correct?

2 A. Uh-hum. That's right.

3 Q. So that was really when you were describing what he
4 had done or when you had seen him much later in the day; is
5 that correct?

6 A. No, sir.

7 Q. Well, 15-- oh, okay.

8 A. That was in the morning.

9 Q. Okay. But then, and that was supposed to be when
10 he was out smoking a cigarette; is that correct?

11 A. That's right. Yes, sir.

12 Q. Okay. But then you go on and say that-- and you
13 said you walked about that time of day; is that correct?

14 A. That's right. Yes, sir.

15 Q. Okay, and Ms--

16 A. --time of the morning, not day.

17 Q. Time of the morning. Now Ms. Gholston lives right
18 across the street from you; right?

19 A. Right.

20 Q. Is that true?

21 A. Yes, sir.

22 Q. "Okay, had no reason to keep up with the time at
23 that point?" And the answer is "No." And that was your
24 answer; is that correct?

25 A. Yes, sir.

26 Q. And it says, "What happened after you saw Mr.
27 Flowers?" "Well, I went on in the house, and it was about,
28 like I say, I said in my statement it was about 7:30." Okay?
29 Is that true?

1 A. Yes, sir.

2 Q. Okay, "But it could have been earlier. It could
3 have been a lots earlier. I seen him again when he came in
4 the house. He went through the back door." Okay, is that
5 true?

6 A. Yes, sir.

7 Q. Okay, so your estimate was that it was 7:30. But
8 you indicated it could have been earlier; is that true?

9 A. Yes, sir.

10 Q. But you say you sweep your porch generally around
11 about 7:00 or so; is that correct?

12 A. In that area, yes, sir.

13 Q. And then I think we have had a chance to talk about
14 this--

15 A. --Yes, sir.

16 Q. And you have told me that the tops, as far as your
17 belief, it couldn't have been any earlier than 7 o'clock.
18 Isn't that true?

19 A. Repeat that again.

20 Q. It had to be somewhere between 7 o'clock and 7:30.
21 Isn't that true?

22 A. That's right.

23 Q. Okay, that's what you told us?

24 A. Yes, sir.

25 Q. Okay, so somewhere between 7 o'clock and 7:30, and
26 you saw him with a black, according to your testimony, you
27 saw him with these black silk pants on; is that correct?

28 A. Yes, sir.

29 Q. Or what you call a windbreaker, wind suit; right?

1 A. Wind suit pants, not the whole wind suit.

2 Q. Okay, and you didn't see him with any long white
3 pants on?

4 A. No, sir.

5 Q. And you certainly didn't see him with any black
6 sweater on; is that correct?

7 A. No, sir.

8 Q. And you saw him walking in the direction where a
9 whole lot of his family lives; right?

10 A. Yes, sir.

11 Q. Okay. Now the other thing if I'm not mistaken,
12 what you did before you saw him walking anywhere is you saw
13 him going to his house; isn't that correct?

14 A. Repeat that.

15 Q. Okay, Counsel asked you if you had seen him leave
16 the house on two different occasions. Actually what you
17 indicated in your testimony is you saw him coming in the
18 house on one occasion; right?

19 A. Right.

20 Q. Okay, and what you have indicated in your
21 testimony, that that was somewhere between 7:00 and 7:30; is
22 that right?

23 A. That's right.

24 Q. Okay, and then you, then what happened is that
25 after staying in the house, after being in there between 7:00
26 and 7:30, actually he was in the house. When you saw him go
27 in the house, he was in there from 20 to 30 minutes, wasn't
28 he?

29 A. No, that is not what I said.

1 Q. Okay. Okay. But in your... (Pause.) Okay, but
2 you made the statement I think while ago to the police -- do
3 you remember-- well, do you remember ever saying to, do you
4 remember ever telling anybody including myself that you think
5 he was in there at least 20 minutes or 30 minutes, 20 to 30
6 minutes? It could have been as long as 30; it could have
7 been as little as 20?

8 A. No. No, sir.

9 Q. Okay. (Pause.) Okay, I will come back to that. We
10 need to take a look at another statement that you had there.
11 But in any event, you saw him coming in there. We have got
12 it down to-- you saw him go in there, and he stayed in the
13 house, and he came out dressed the same way he was when you
14 saw him go in; is that right?

15 A. Uh-hum. Yes, sir.

16 Q. Okay. And you have already told us that, what kind
17 of clothes he had on; is that correct?

18 A. Yes, sir.

19 Q. Okay. And the other thing is that you have
20 indicated to us on a prior occasion that actually, if I'm not
21 mistaken, I think what you actually said that the reason that
22 you recall these Fila shoes, and just like you said today,
23 you said at that time that your children had brought them to
24 your attention. But you said that you actually had purchased
25 some Grant Hill shoes for your kids. Isn't that what you
26 said?

27 A. Yes, I purchased some for them after I seen them.
28 That's what I said.

29 Q. Okay, so you are saying that you did purchase some

1 Grant Hill shoes for your children?

2 A. Yes, sir.

3 Q. Okay. Well, now, Ms. Hollman, your children at
4 that time, your oldest child was only about 8 years old;
5 isn't that correct?

6 A. Was how old?

7 Q. About 8 years old in 1996; isn't that correct?

8 A. (No response.)

9 Q. And this was actually in the summer of 1996.

10 A. (No response.)

11 Q. How old was he at the time if you recall?

12 A. 9.

13 Q. About 9 years old?

14 A. About 9.

15 Q. Okay, so now the Grant Hill shoes, they cost about
16 a hundred dollars, don't they?

17 A. Yes, in that range.

18 Q. Okay, and let's see. And you at that time were,
19 you know, like many of us, you know, you are on disability at
20 that time; right?

21 BY MR. EVANS: Your Honor, I object. That is
22 not relevant to this case.

23 BY MR. LUMUMBA: Well, I think it could be.

24 BY THE COURT: I'm going to allow him to go
25 into it.

26 BY MR. LUMUMBA:

27 Q. Okay, and I'm not trying to pry or anything, but I
28 just wanted to know. You wasn't rich; right?

29 A. No, I was not but-- oh, I can't go into it?

1 Q. Okay. But in any event, I noticed when you came in
2 today and--

3 BY MR. EVANS: --May we approach because I
4 think he is getting into something that she may
5 need to answer?

6 BY THE COURT: Okay.

7 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
8 THE JURY AS FOLLOWS:)

9 BY MR. EVANS: There is apparently something
10 that either us or him one has told--

11 BY THE COURT REPORTER: --I can't hear you.

12 BY MR. EVANS: Apparently it was something
13 that either I or Mr. Lumumba one has told her not
14 to go into because in response to that, she said
15 there was something I can't answer. And if it's
16 something that he has opened the door to, I would
17 like to let her go ahead and go into it. I would
18 like out of the presence of the jury to ask her--
19 well.

20 BY MR. LUMUMBA: Well, I think that he would
21 have to do that on his own time. Now if he wants
22 to have a--

23 BY THE COURT: --Y'all, I know that I'm a lot
24 of things, but clairvoyant ain't one of them.

25 BY MR. HORAN: I have one other thing, Your
26 Honor. I know this is not regarding this witness,
27 but it's highly improper; the Rules specifically
28 state counsel for, the attorneys cannot address the
29 jury, and Mr. Lumumba addressed the jury--

1 **BY THE COURT:** --Oh, God. Let's get on with
2 this case.

3 **BY MR. HORAN:** I am objecting to him doing
4 that.

5 **BY THE COURT:** Well, you can object to it. I
6 note your objection. Let's move on.

7 **END BENCH CONFERENCE**

8 **CONTINUING CROSS-EXAMINATION BY MR. LUMUMBA:**

9 Q. Okay, I'm sorry to hold you up here, but I did find
10 what I was looking for. I'm referring to your testimony on
11 page 587, and it says here Patricia Hallmon, redirect. It
12 says that, "And also when he asked you about how long he
13 stayed in there...." And let's put that in context because I
14 don't want to take that out of context. He said that he--
15 wait; here is the page right here. The page before it is
16 actually over here. Okay. "Ms. Hollman, do you remember
17 when Mr. Johnson asked you about the time frame? You said
18 you were walking that morning. Do you remember"
19 saying, "making a statement, it was about 7:30 AM when I seen
20 him running to the house? Do you remember that?" And your
21 answer was, "Uh-hum, yes." Is that correct?

22 A. Yes.

23 Q. Okay, and you were asked, "When he asked you about
24 how long he stayed in there, you said it was about 20
25 minutes?" And the answer you did again, you said yes. Is
26 that correct?

27 A. Yes.

28 Q. Or "Uh-hum," which means yes; right?

29 A. Yes.

1 Q. Okay. So in '87 your memory was a little closer to
2 that time than it is now; is that correct?

3 A. Not in '87.

4 Q. Okay, well, I'm sorry, not in '87. I'm sorry. You
5 got me on that one. But in '97; is that correct?

6 A. Yes.

7 Q. Okay, but anyway, so at least according to that
8 time you testified, you said it was about 20 minutes. Is
9 that correct?

10 A. Yes. It was just, it wasn't an exact specific
11 time.

12 Q. Yeah, I know; you were never exact, but it wasn't
13 like he just went in and split right out; right?

14 A. Yes, it--

15 Q. --And we are talking about the time in between 7:00
16 and 7:30. That's the time we are talking about; right?

17 A. (No response.)

18 Q. I mean we have already, we have already ascertained
19 that there wasn't any, from our previous conversation here
20 that it wouldn't have been any earlier than 7:00 and any
21 later than 7:30; is that right?

22 A. That's right.

23 Q. Okay. And now the other thing is this. Let me
24 check with something right quick.

25 BY MR. LUMUMBA: Judge, may we approach one
26 second?

27 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
28 THE JURY AS FOLLOWS:)

29 BY MR. LUMUMBA: The Court doesn't have copies

1 of these transcripts, do you?

2 BY THE COURT: No, sir.

3 BY MR. LUMUMBA: Okay, I am missing a page of
4 this transcript. Okay. All right. Okay.

5 END BENCH CONFERENCE

6 BY MR. LUMUMBA:

7 Q. Now Ms. Hollman, now you testified that you were
8 someone's godmother; is that correct?

9 A. Uh-hum.

10 Q. Okay. Well, isn't it true that you actually aren't
11 even familiar with Connie's real children's names, that you
12 just know their nicknames?

13 A. No, I know their names.

14 Q. Oh, you do. Okay. Well, in 1997, I'm going to see
15 if you were asked that question and if you gave this answer.
16 Question on page 583, Patricia Hollman. "Does she have one
17 child named Marcus Moore?" Answer: "I don't really know his
18 name. I just know his nickname. But I know-- yes, she have
19 a child named Lamarcus. I know most of their nicknames. I'm
20 not familiar with their real names, but I know them when I
21 see them." Isn't that what you said?

22 A. Yes, sir.

23 Q. Okay. Now you also, would you recall the first
24 time you ever really had a discussion with the police about
25 this case would have been sometime in August of 1996? Do you
26 recall that that is the case?

27 A. Yes, in August.

28 Q. Yeah, and would August the 7th, I mean I don't
29 expect you to know the exact date, but August the 7th sound

1 about right?

2 A. Somewhere in that category. I'm not for sure.

3 Q. Okay. Now and I'm just asking you because I want
4 to know. You were aware, of course, that there was a reward
5 being offered for this case; is that correct?

6 A. No, I was not.

7 Q. Well, let me ask you this. You do have a brother;
8 is that correct?

9 A. Yes.

10 Q. And his name is Odell Hollman; is that correct?

11 A. Jr.

12 Q. Okay, Odell Hollman, Jr.; right?

13 A. (Witness nods her head.)

14 Q. And your brother, you have a brother, and your
15 brother Mr. Hollman, Jr., did he ever discuss with you around
16 about that time the possibility of getting some reward money
17 in this case?

18 A. No, he did not.

19 Q. Did he ever ask you that since you were right next
20 door to Curtis, that perhaps you could get involved and help
21 get some--

22 A. --No, he did not.

23 Q. Did he ever write you or contact you later on when
24 he was away because he got in some trouble, and he had to go
25 away; is that correct?

26 A. That's correct.

27 Q. Okay. Did he ever write you and ask you if there
28 was some way that you could get some money together to help
29 get him out of there?

1 A. No, he did not.

2 Q. Did he ever ask you to get involved with the reward
3 in order to do that?

4 A. No, he did not.

5 BY MR. LUMUMBA: May we approach one more
6 time? I think I'm about finished here.

7 BY THE COURT: Okay.

8 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
9 THE JURY AS FOLLOWS:)

10 BY MR. LUMUMBA: If necessary, I would like
11 for the jury to leave so we can argue this if it
12 needs to be argued. I am making a Motion in Limine
13 to preclude him from now going into, you know, any
14 kind of discussion about what she testified at the
15 last time was an argument between Mr., Mr.-- my
16 client and his wife, okay, and (unintelligible).
17 Now I have information in my notes and statements
18 she gave me that says that it was just an
19 argument. She had no way to relate it to anything
20 about Tardy's, okay.

21 BY THE COURT: Well, I don't see how it would
22 be proper redirect at this time.

23 BY MR. LUMUMBA: Well, that's what I thought--

24 BY MR. EVANS: Your Honor, I'm sorry; I
25 thought you were through.

26 BY MR. LUMUMBA: That's the only reason I
27 raised it because I don't want to pass on my chance
28 to go into it if it's going to be allowed, but I
29 don't want it to be allowed.

1 BY MR. EVANS: We don't intend to go into that
2 at this point. Your Honor, there is one matter
3 that I need to bring to the Court's attention. I
4 think under the rules I have to. Because of this
5 line of questioning that he has raised, it is going
6 to be necessary for me to ask this witness
7 questions. It is going to bring out that her
8 brother Odell Hollman was in Parchman with Curtis
9 Flowers. I am going to ask her what her brother
10 asked her to do, what her brother did say to her,
11 and just let her explain it. I'm not sure and I'm
12 going to ask her, but I think because of the rules,
13 I have got to go over it and let the Court know
14 what we anticipate doing before we do it.

15 BY MR. LUMUMBA: Judge, first of all, it is
16 extremely prejudicial to point out unless he has,
17 there is--

18 BY THE COURT: --Well, I think you have kind
19 of pointed it out yourself.

20 BY MR. LUMUMBA: Well, no, what I'm saying
21 about that is that her brother was never in the
22 same unit at Parchman prison or in contact with
23 Hollman, and I think that if you are going to do
24 that, I would ask you for a chance to prove that.
25 There is no way that they had any contact.
26 Prisoners are not even allowed to write each other
27 at the jail. There is no way.

28 BY THE COURT: In light of her answers to that
29 where she said that it did not occur at all--

1 BY MR. EVANS: Just the answers that he asked
2 for.

3 BY THE COURT: Huh?

4 BY MR. EVANS: Just the answers that he asked
5 for. She did have conversations with her brother,
6 but the answers that he asked for were not what
7 they talked about.

8 BY MR. LUMUMBA: Well, any answers that her
9 brother gave have to be hearsay, and the only time
10 they become admissible if she has to impeach her
11 brother. Now we are not talking about her
12 statements. We are talking about her brother's
13 statements.

14 BY THE COURT: Right. That would be hearsay.

15 BY MR. LUMUMBA: Yeah, anything is hearsay
16 unless her brother has to be impeached. He doesn't
17 have to be impeached, and the way I asked the
18 questions were very careful. In no way did I imply
19 that she was guilty of it. But I could not, not
20 ask--I mean, you know, but I have to actually lay a
21 predicate in case we call her brother. If we call
22 her brother, they are free to impeach him of
23 whatever they have, you know, including her.

24 BY THE COURT: I really think that's the
25 proper time to do that. I mean in light of her
26 testimony, I mean I don't think you are precluded
27 from doing it, but I think it probably may be-- you
28 have got her for rebuttal, and you have got-- if he
29 testifies, you have got a right to cross-examine.

1 At this time she has not testified anything but in
2 the negative. I mean she has denied it all. Until
3 you get to some other point, I don't think you are
4 at that stage. I think you have got--

5 BY MR. LUMUMBA: Okay.

6 (Mr. Evans and Mr. Horan confer out of the
7 hearing of the Court Reporter.)

8 BY THE COURT: Wait a minute now. What are
9 you talking about some relationship?

10 BY MR. EVANS: The fact that her brother was
11 in Parchman with Curtis and knew him and they had
12 conversation.

13 BY THE COURT: Well, unless she was over there
14 in the cell, she can't know that anyhow.

15 BY MR. EVANS: No, it would all be hearsay,
16 but it would all be hearsay because of what they
17 brought up. But I understand the Court's--

18 BY THE COURT: Okay.

19 BY MR. EVANS: I understand the Court's
20 ruling, and we will follow it.

21 BY THE COURT: Okay, move on.

22 END BENCH CONFERENCE

23 CONTINUED CROSS-EXAMINATION BY MR. LUMUMBA:

24 Q. Okay, Ms. Hollman, so if I understand it, basically
25 what you are offering today is that Mr.-- you did see, you
26 think you saw Mr. Flowers that day; is that correct?

27 A. Repeat your question, please.

28 Q. You indicated you saw Mr. Flowers that day; is that
29 correct?

1 A. Yes, sir.

2 Q. And actually since you live next door, you probably
3 saw Mr. Flowers just about every day; is that right?

4 A. Yes, sir.

5 Q. Okay, so in that respect, seeing Mr. Flowers was
6 nothing unusual. Isn't that true?

7 A. That's right.

8 Q. Okay. Okay, and you have indicated that he did
9 have these black silk pants on, or I keep saying silk.

10 A. Wind suit.

11 Q. Wind suit. They might look a little silky, but
12 they are really not silk; right? Is that true?

13 A. Yes, sir.

14 Q. Okay, and you have indicated that he had on a white
15 T-shirt; is that correct?

16 A. Yes, sir, with writing on the front.

17 Q. And you didn't see any black or gray sweater or
18 anything like that?

19 A. No, sir.

20 Q. And you certainly didn't see him in a jacket which
21 we might call like a white or gray windbreaker?

22 A. No, sir.

23 Q. And you didn't see him in any dressy looking jeans?

24 A. No, sir.

25 Q. And you didn't see him with a dressy looking white
26 shirt which is button up the front?

27 A. No, sir.

28 Q. And you didn't see him in anybody's car at that
29 time; is that correct?

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 A. No, sir.

2 Q. And you didn't see him with any type of weapon;
3 right?

4 A. No, sir.

5 Q. Okay, or is that all true?

6 A. Yes, sir. It's true.

7 Q. And this box here, one of them says it's a Grant
8 Hill Olympic, and the other one says it's a Grant Hill II; is
9 that correct?

10 A. Yes, sir.

11 BY MR. LUMUMBA: And I have no further
12 questions at this time. Thank you very much.

13 REDIRECT EXAMINATION BY MR. EVANS:

14 Q. Ms. Hollman.

15 A. Yes, sir.

16 Q. Is that the same kind of shoes that Curtis Flowers
17 had on the day of the killings at Tardy Furniture?

18 A. Yes, sir. It's two kind of Filas. One have blue
19 up in here, but it's still the Grant Hill. My kids had the
20 one with the blue. They didn't want it exactly like his. My
21 children had the blue like, other kind of leather like stuff
22 in between there because they were children's shoes, and they
23 are not going to be exactly like the adults.

24 Q. And this is an adult shoe?

25 A. Yes.

26 Q. And the shoes that he had on were Fila name brand--

27 BY MR. LUMUMBA: --Excuse me--

28 BY MR. EVANS: --Grant Hill--

29 BY MR. LUMUMBA: --Judge, Judge--

1 BY MR. EVANS:

2 Q. --model; is that correct?

3 BY THE COURT: Wait, wait. Let him--

4 BY MR. LUMUMBA: --Can we stop leading the
5 witness? I think this is--

6 BY THE COURT: Okay, can't lead her now.

7 BY MR. LUMUMBA: Okay, I would appreciate it.

8 BY MR. EVANS:

9 Q. I will just ask you since I can't ask the question
10 like that, what type shoes did he have on?

11 A. Fila Grant Hill tennis shoes.

12 Q. Thank you. Now you have been asked by opposing
13 Counsel about different things from a prior transcript. I
14 want to ask you a few questions from it.

15 BY MR. LUMUMBA: Can we get page references,
16 please?

17 BY MR. EVANS: Okay, just a second.

18 BY MR. EVANS:

19 Q. On page 563, line 26 through 29, did you tell us
20 what children were living with Connie Moore--

21 A. Yes, sir.

22 Q. --and Curtis Flowers?

23 A. Yes, sir.

24 Q. What names did you give?

25 BY MR. LUMUMBA: Objection, Judge. I don't
26 see.

27 BY MR. EVANS: Look at line 29.

28 BY MR. LUMUMBA: No, I don't any problem with
29 the-- oh, going into the names--

1 BY THE WITNESS: --Lemarcus and Brittany
2 Moore.

3 BY MR. LUMUMBA: Okay, I don't have any
4 problem with going into the names.

5 BY MR. EVANS:

6 Q. Since y'all were talking at the same time, would
7 you repeat your answer, please?

8 A. "Lemarcus Moore and Brittany Moore."

9 Q. And as opposing Counsel brought out on page 586,
10 line 29, what was Curtis doing when you saw him coming back
11 to the house?

12 A. He was running.

13 Q. Pointing out on 566, line 19, what was his
14 condition at that time?

15 A. "He was in a rage."

16 BY MR. LUMUMBA: Objection to that. Objection
17 to that. What is he talking about?

18 BY MR. EVANS: On what basis?

19 BY MR. LUMUMBA: May we approach, Judge?

20 BY THE COURT: Sure.

21 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
22 THE JURY AS FOLLOWS:)

23 BY MR. LUMUMBA: There is no way-- I didn't
24 even use that provision of the transcript. Now if
25 he is going to-- see, that's the kind of stuff I am
26 talking about. If he is going to-- he can't just,
27 you know, ambush me. If he wants to talk about a
28 rage, he should have raised it on direct, so I can
29 cross-examine her on it. All I did is ask her

1 about the man coming in. He had asked about what
2 time he had left. I cross-examined on that, and he
3 can't come back and talk about he came in in a
4 rage. That is an intentional ambush, and I don't
5 think that is allowed.

6 BY MR. EVANS: Your Honor, I did not even go
7 into the transcripts. He brought the transcripts
8 up. He went into it. He specifically asked her
9 about parts of it, and I am just going further into
10 different parts of the transcripts.

11 BY THE COURT: Well, the transcripts are not
12 relevant to this. It is a question of what was
13 raised on cross-examination that you are entitled
14 to go into on redirect. And there was nothing on
15 cross-examination that I heard about his demeanor
16 one way or another. It was all about him coming
17 and going and whether he--

18 BY MR. HORAN: --and the times.

19 BY THE COURT: And the times. But as to his
20 demeanor, there was nothing raised about that, and
21 you didn't go into it on direct. It's just not
22 proper redirect.

23 BY MR. HORAN: He asked her to describe Mr.
24 Flowers at that time.

25 BY MR. EVANS: Uh-huh.

26 BY MR. LUMUMBA: No, I didn't.

27 BY THE COURT: I'm not going to allow it. It
28 is just not there.

29 END BENCH CONFERENCE

1 BY MR. LUMUMBA: Hold it just a minute.

2 BY MR. EVANS:

3 Q. All right, Ms. Hollman, I want to direct your
4 attention to a statement that you gave on August the 7th of
5 '96, and ask you in that statement what time did you tell
6 the officers that you saw the Defendant running back to his
7 house?

8 A. About 7:30.

9 Q. Okay.

10 BY MR. EVANS: That's all we have of this
11 witness, Your Honor.

12 BY THE COURT: Is she finally excused, or do
13 you want her to stay in the witness room?

14 BY MR. LUMUMBA: Judge, we are probably going
15 to have to hold her.

16 BY THE COURT: You want to keep her. Okay,
17 that is fine. You need to return to the witness
18 room, Ms. Hollman.

19 WITNESS LEAVES COURTROOM.

20 BY THE COURT: Who do you have next?

21 BY MR. EVANS: Mary Jeanette Fleming.

22 BY THE COURT: Have you been sworn?

23 BY THE WITNESS: No.

24 BY THE COURT: Stand up, please, ma'am. Raise
25 your right hand.

26 MARY JEANETTE FLEMING,
27 a black female called to testify as a witness by the State of
28 Mississippi, having first been duly sworn, testified as
29 follows, to-wit:

1 **BY THE COURT:** Have a seat right there.

2 BY MR. EVANS: May I proceed, Your Honor? Did
3 you ask the witness to state her name? I was
4 looking at this.

5 **BY THE COURT:** I did not. State your--

6 DIRECT EXAMINATION BY MR. EVANS:

7 Q. --If you would, state your name.

8 A. Mary Jeanette Fleming.

9 Q. Mary Jeanette Fleming?

10 A. Uh-hum.

11 Q. Ms. Fleming, before I even start, is there another
12 person that you know by the name of Mary Fleming?

13 A. Uh-hum.

14 Q. And what is her relationship?

15 A. She is my niece.

16 **BY THE COURT:** Ms. Fleming, if you will, if
17 you will turn where you are facing him. That way
18 that microphone will pick you up better. Okay?

19 BY THE WITNESS: Like this?

20 **BY THE COURT:** Yes.

21 BY THE WITNESS:

22 A. Okay. She is my niece.

23 Q. Okay, Ms. Fleming, I want to direct your attention
24 back to the day that the murders occurred at Tardy Furniture
25 in Winona. Do you remember that day?

26 A. Yes, sir.

27 Q. What were you doing that morning?

28 A. Well, I had called to Weed Brother to get an
29 estimate on a windshield because it had got broken out that

1 Saturday at a club. So I called down there and asked them,
2 you know, how much would it be. And they told me they had to
3 order it. So I told them I was going to bring my car down
4 there to drop it off. So I left home about at 10 till 9:00
5 and took it down there. And so I just dropped it off and
6 left it. So, you know, I got out of the store walking back
7 home. So when I was walking back home, that's when I met
8 Curtis Flowers, you know.

9 Q. All right, let me stop you just a minute and try to
10 take this step by step. Where is Weed Brothers?

11 A. It's behind Tardy's.

12 Q. Is it in that alley behind Tardy Furniture?

13 A. Yes, sir.

14 Q. And what time did you drop your car off at Weed
15 Brothers to the best of your memory?

16 A. Well, I left home at 10 minutes to 9:00.

17 Q. About how long would it have taken you to get to
18 Weed Brothers?

19 A. It shouldn't have took but about, I guess probably
20 not 5 minutes.

21 Q. Okay, and how long did you stay in there talking to
22 them about your car?

23 A. I didn't talk to them. I dropped it off. I told
24 here was-- they was standing there waiting for me, some guy,
25 and I told him here was my car. So I got out and left it,
26 and I started walking back home.

27 Q. All right, and explain to the ladies and gentlemen
28 of the jury the path that you took to walk back home?

29 A. I got, I left Carrollton Avenue, got on Church

1 Street. Then I got on Campbell Street.

2 Q. Okay, do you live fairly close to Weed Brothers?

3 A. Well, not far. I was living on 702 Freedman behind
4 Piggly Wiggly.

5 Q. All right. As you were walking home leaving from
6 behind Tardy Furniture, you said you saw Curtis Flowers?

7 A. Yes, sir.

8 Q. How long had you known Curtis Flowers?

9 A. I known him for quite a while.

10 Q. Where did you meet Curtis Flowers?

11 A. Where did I meet him?

12 Q. On that day?

13 A. Oh. Walking on Campbell Street.

14 Q. How far from Tardy Furniture was he when you saw
15 him?

16 A. It wasn't very far.

17 Q. Are we talking about down the same block or the
18 second block?

19 A. The same. The same block.

20 Q. Same block Tardy Furniture is on?

21 A. Well, no. It's not the same block. This was on
22 Campbell Street where I met him.

23 Q. Okay. So it would be a couple of blocks from
24 there?

25 A. Yes.

26 Q. Was he walking toward or away from Tardy Furniture?

27 A. Toward.

28 Q. Did y'all have any conversation?

29 A. No, he spoke to me and I spoke. I kept going and

1 he kept going.

2 Q. What did he say to you?

3 A. He spoke and said, "Hi, good looking." And so I
4 said, "Hi." He went on, so I went on. But I made a stop at
5 a friend's house.

6 Q. Any question who you saw and who spoke to you that
7 morning?

8 A. No. No question.

9 Q. Would you point to the person that you saw walking
10 in that direction that morning?

11 A. (Witness points.)

12 BY MR. EVANS: May the record reflect that she
13 has identified the Defendant in this cause?

14 BY THE COURT: Let the record reflect that
15 fact.

16 BY MR. EVANS:

17 Q. Ms. Fleming, did you point out to any officers
18 where you saw him walk in that direction that morning?

19 A. Yes.

20 Q. And what street did you say you saw him on?

21 A. Campbell Street.

22 Q. I want to hand you Exhibit 7 for identification and
23 ask you if you can identify on this map--

24 BY MR. LUMUMBA: --Can I approach, Judge, so I
25 can see?

26 BY MR. EVANS: This map.

27 BY MR. LUMUMBA: Okay, I just want to see
28 where she points to.

29 BY MR. EVANS:

1 Q. Can you see a street on there -- let me point out
2 to you what has been described. This is First Street. This
3 is Carrollton Avenue. This is Church, and this is Campbell
4 Street.

5 A. Where is Campbell at?

6 Q. Turn it this way, and you can see the name Campbell
7 Street right there.

8 A. Oh, okay. Which way-- where is-- this is
9 Carrollton Avenue; right? Okay, I got off--

10 Q. --All right, this is Carrollton right here. This
11 is Church. And this is Campbell.

12 A. (Pause) This is Campbell right here.

13 Q. Right. This is Campbell right here.

14 A. Okay.

15 Q. Is that the street that you saw him on?

16 A. Yes, uh-huh.

17 Q. All right, do you see the area in here that has the
18 9 marked on it?

19 A. Right there?

20 Q. Right. Is that the street that you saw him on--

21 A. Yes, Campbell.

22 Q. --Campbell, right in there? Is that about the part
23 of the street that you saw him on?

24 A. Yeah, but it-- yes. It was back farther.

25 Q. Back farther which way? Toward town?

26 A. Toward 51 like.

27 Q. Okay.

28 BY MR. EVANS: Your Honor, I offer this
29 exhibit into evidence.

1 BY MR. LUMUMBA: Isn't it in evidence
2 already?

3 BY MR. EVANS: For identification at this
4 point.

5 BY MR. LUMUMBA: Okay.

6 BY THE COURT: No objection?

7 BY MR. LUMUMBA: No, sir.

8 BY THE COURT: Let it be marked.

9 (MAP OF STREETS OF WINONA PREVIOUSLY MARKED AS
10 DEFENDANT'S EXHIBIT D-7 FOR IDENTIFICATION WAS NOW
11 ADMITTED IN EVIDENCE AT THE REQUEST OF THE STATE.)

12 (Pause while State's Counsel confer.)

13 BY MR. EVANS:

14 Q. All right, I believe in a prior transcript trying
15 to describe it, you said that where you saw him was close to
16 the intersection of Church Street and Campbell Street; is
17 that correct?

18 BY MR. LUMUMBA: Uh--

19 BY THE WITNESS:

20 A. Well--

21 BY MR. EVANS: Wait just a second. There may
22 be an objection.

23 BY MR. LUMUMBA: No, that is okay.

24 BY THE WITNESS:

25 A. It was on Campbell, but it was closer to town. It
26 was in front of Glenn Banks, almost to Glendale Likwa's
27 (phonetically) house where I met him at.

28 Q. Almost at what?

29 A. He was on Campbell Street. It wasn't very far from

1 town where he was approaching.

2 Q. Okay, and town, is that the area that you are
3 talking about down where Tardy Furniture street is and the
4 cleaners and?

5 A. (Witness nods her head.)

6 Q. The railroad track and all of that?

7 A. (Witness nods her head.)

8 Q. All right, you can't just nod your head. You have
9 got to--

10 A. --Yes.

11 BY MR. LUMUMBA: --That is true, Judge, and he
12 also can't ask her leading questions.

13 BY THE COURT: Okay, don't lead her now.

14 BY MR. LUMUMBA: I object to that.

15 BY MR. EVANS: I tender the witness at this
16 point.

17 BY MR. LUMUMBA: May I proceed, Judge?

18 BY THE COURT: Yes, sir.

19 (Mr. Freelon enters the courtroom.)

20 CROSS-EXAMINATION BY MR. LUMUMBA:

21 Q. Good morning, Ms. Fleming. How are you doing?

22 A. Good morning. All right.

23 Q. Okay, Ms. Fleming, when he pointed to the spot that
24 the "9" is on the map which is now Exhibit D-7, what you
25 indicated is that the time, whenever it was that you saw Mr.
26 Curtis Flowers, that he was closer to 51 than that spot. Is
27 that true?

28 A. He wasn't closer to 51. He was between Campbell--
29 he had made it -- he was almost fixing to enter to Church

1 Street when I seen him.

2 Q. But let me see if we have got this number 9 here,
3 okay? Do you see this number 9 on this map right here?
4 That's what he pointed to, and he asked you if that was the
5 spot you seen him at; is that right?

6 A. Yeah. Yeah.

7 Q. And you said he was closer to 51 than that; isn't
8 that what you just told--

9 A. --But this is Campbell Street right here. He was,
10 you know, he was coming to Campbell Street, was on Campbell
11 Street when I seen him.

12 Q. Yeah, but listen to my question carefully. You
13 indicated that he was closer to 51. I'm not saying he was on
14 51, but he was on Campbell at a spot closer to 51 than this
15 "9" is?

16 A. No.

17 Q. That's not what you said?

18 A. I said it, but he wasn't closer to 51.

19 Q. Okay.

20 A. I didn't understand that thing there.

21 Q. Okay, well, let me ask you this by the way. This
22 downtown we are talking about, it has a post office in it; is
23 that correct?

24 A. Yes, it has got a post office.

25 Q. And it has got a bank in it; is that right?

26 A. What?

27 Q. Town. Does it have a bank in it?

28 A. (Witness nods her head.)

29 Q. I'm sorry?

1 A. Yes.

2 Q. You have to say yes or no.

3 A. Yes, sir.

4 Q. And it has a lot of things in it other than, and
5 people go into town all the time; is that correct?

6 A. Yes, that's correct.

7 Q. Every day; right?

8 A. Yes.

9 Q. And I think that you have previously testified that
10 the time that you were supposed to be there you were dropping
11 off your car; is that correct?

12 A. Yes, I was.

13 Q. And so other people were doing business downtown
14 too; is that right?

15 A. I imagine so, yes.

16 Q. And so it is certainly nothing strange about going
17 in town; is that--

18 A. --I didn't say it was.

19 Q. Okay, and I'm not trying to say you did, but I am
20 just asking you the question. Is that okay?

21 A. Yes.

22 Q. Okay, so there is nothing strange about that;
23 right?

24 A. Okay.

25 Q. Don't, let's not be defensive; okay?

26 A. I'm not.

27 Q. Okay. Now the other thing is that the, in fact,
28 you probably saw a lot of other people too other than Mr.
29 Curtis on whatever day you saw him. Is that true?

1 Q. Okay, what you have previously described as a-- you
2 described it before as kind of like a gray jacket?

3 A. Yes.

4 Q. With purple on the shoulders?

5 A. Yes.

6 Q. But he had on a white button up shirt when you saw
7 him?

8 A. Yes, he did.

9 Q. This was like a dress shirt; right?

10 A. Yes, sir.

11 Q. And I think you have previously told folks that he
12 had these dressy looking pants on, probably jeans, neat
13 jeans; is that correct?

14 A. Well, yes, he had black jeans, that shirt I said
15 and a jacket.

16 Q. Black jeans. But you didn't see him with no white
17 long pants on?

18 A. No, I didn't.

19 Q. And you didn't see him with no what we call black
20 windbreaker pants on?

21 A. No.

22 Q. You didn't see him with that? Okay, and you didn't
23 see him with a white T-shirt on, did you?

24 A. No.

25 Q. What you saw him with on was a dressy looking white
26 shirt that had buttons up the front?

27 A. Yes.

28 Q. Okay, and you described him as looking dressy;
29 right?

1 Q. That is not unusual; is that right? It's not
2 unusual that people wouldn't pay attention to people's shoes;
3 right?

4 A. Right.

5 Q. Okay. Now in fact, it might be unusual if people
6 are paying attention to people's shoes; isn't that right?
7 Just somebody walking down the street?

8 A. Yeah, right.

9 Q. Okay, now let me ask you this. Now just a couple
10 of things I want to check on. You are claiming that the day
11 that you went down there, I think you have indicated that it
12 was around-- you previously testified that you made a call to
13 Weed Brothers around about 10 minutes to 9:00; is that
14 correct?

15 A. Yes.

16 Q. And that was the first time you had ever called
17 Weed Brothers about your car?

18 A. Yes.

19 Q. Your car had a broken window in it; right?

20 A. Yes.

21 Q. And you needed to take your car down to be
22 repaired?

23 A. Yes.

24 Q. So that was the first time you called was about 10
25 minutes to 9:00?

26 A. Yes.

27 Q. So if you actually called at 10 minutes to 9:00,
28 then, of course, Weed Brothers didn't know about your problem
29 until 10 minutes to 9:00?

1 A. That's right.

2 Q. Okay, now the other thing is this--

3 A. --It wasn't about 10 till 9:00. It was 10 to 9:00
4 when I left home.

5 Q. Okay. Well, you called a few minutes before that;
6 right?

7 A. Yes.

8 Q. Okay, so maybe 15 minutes to 9:00?

9 A. Yes.

10 Q. Okay. Now the other thing is this. And this is
11 probably not a major thing. It's just, you know, but just
12 page 689. This is your name, Mary Jeanette Fleming?

13 A. Uh-hum.

14 Q. And this is at a previous hearing. "Do you
15 remember about what time, approximately the time that you
16 left your residence?" And at that time you said, "10 minutes
17 to 9:00." Is that correct?

18 A. Yes.

19 Q. Okay. So but in any event, today you think it may
20 have been 15 minutes to 9:00; correct?

21 A. Sir?

22 Q. Today it may have been 15 minutes to 9:00 you
23 said--

24 A. --I was looking at the clock when I was talking on
25 the phone.

26 Q. Okay. Okay. Well, you are right. You called
27 about 15 to 9:00, and you left about 10 minutes to 9:00?

28 A. Yes.

29 Q. Okay, very good. But in any event, you know you

1 don't leave at 8:00; is that correct?

2 A. I didn't leave at 8:00.

3 Q. And you know you didn't call at 8:00?

4 A. No, I didn't.

5 Q. Now the other thing is you have indicated here-- by
6 the way, Clemmie Fleming is your niece; right?

7 A. Yes.

8 Q. You are related to her?

9 A. Yes.

10 Q. Okay. Now the other thing is you indicated that
11 when you came out of Weed Brothers -- now Weed Brothers is
12 right there behind -- Weed Brothers, by the way, is right
13 there behind Tardy; right?

14 A. Yes.

15 Q. And that's where you left your car?

16 A. Yes.

17 Q. Okay. Now and there was somebody working in there
18 at Weed Brothers?

19 A. Yes.

20 Q. Now in order for you to see on that day Curtis
21 where you saw him at, when you left Weed Brothers, I think
22 what you have previously said in prior testimony is that what
23 you did is you would have come out of Weed Brothers and then
24 gone up--

25 A. --I didn't go in Weed Brothers.

26 Q. Okay, well, you were out there in the front of--

27 A. Oh, yeah.

28 Q. In the lot; is that correct?

29 A. Yes.

1 Q. But you left the lot at a certain point; right?

2 A. Yes.

3 Q. And you went to Carrollton; right?

4 A. Uh-hum.

5 Q. And then you are saying that you turned. You
6 turned and went directly to Carrollton; is that right?

7 A. Oh, I got off-- when I parked my car, I think Weed
8 Brothers is on Carrollton. I left Carrollton Avenue. I got
9 on Church Street. Then I entered Campbell Street.

10 Q. Okay, well, look, I just want to get it straight.
11 Let me see. This is Carrollton right here on the map, and
12 then we are going to show the ladies and gentlemen of the
13 jury. I think it has already been testified that this is
14 Carrollton; right?

15 A. Yes.

16 Q. And this here is where Tardy's is supposed to be
17 right here; okay. Do you think you would recognize Tardy's
18 if you saw it in a picture?

19 A. In what picture? This one?

20 Q. Well, no, in another picture. But let me see. Let
21 me see if we can do it without doing that. Let me see.
22 Carrollton is right there next to Weed Brothers; is that
23 right?

24 A. Uh-hum.

25 Q. And you said that you-- so you would have walked
26 straight to Carrollton and then walked up to wherever else
27 you were going?

28 A. Yes.

29 Q. Okay. So you wouldn't have walked the other way,

1 away from Carrollton?

2 A. No, I was going home.

3 Q. But there was a man there when you left; right?

4 The man that deals with the cars?

5 A. Yeah, a guy there. He was standing on the outside,
6 and I had, I just told him I come to drop my car because I
7 already told him I was on my way to drop it off.

8 Q. Okay, so he saw you?

9 A. Yes.

10 Q. Okay. And if you would not have gone that way down
11 Carrollton, if you would have went the other way, then it's
12 your testimony that on whatever day, that you never would
13 have seen Mr. Flowers; is that correct?

14 A. Well, I reckon if I had went another way, I guess I
15 wouldn't have. I didn't ask to see him.

16 Q. You never saw Mr. Flowers at Tardy Furniture?

17 A. No.

18 Q. You never saw him coming in; right?

19 A. No.

20 Q. Never saw him going out?

21 A. No.

22 Q. Never saw him anywhere in the vicinity of the
23 building actually?

24 A. No.

25 Q. Were you kind of, that day were you kind of
26 sweating a little bit that day yourself?

27 A. No, I wasn't sweating.

28 Q. (Mr. Lumumba hands transcript to the witness.)

29 This is your name again, Mary Jeanette Fleming; is that

1 correct?

2 A. Uh-hum.

3 Q. And page 696; right? "Were you hot by the time you
4 got that far?" Answer: "Well, yeah." Question: "Sweating?"

5 Answer: "Sort of." Is that correct?

6 A. No. I wasn't sweating. Why would I be sweating?

7 Q. Just let me-- is that what it says here?

8 A. Yeah, that's what that says.

9 Q. And weren't you, aren't you Mary Jeanette Fleming?

10 A. Yes, I am.

11 Q. And doesn't it say the answer was by Mary Jeanette
12 Fleming was "Sort of"?

13 A. Sort of what?

14 Q. "Were you hot by the time you got that far?"

15 Answer: "Well, yeah." Question: "Sweating?" Answer: "Sort
16 of." Is that what it says here?

17 A. That's what that says.

18 Q. And this is your name?

19 A. Yes.

20 (Mr. Freelon leaves the courtroom.)

21 BY MR. LUMUMBA: I don't have any other
22 questions for Ms. Fleming.

23 BY THE COURT: Any redirect?

24 BY MR. EVANS: Yes, sir. Real briefly.

25 REDIRECT EXAMINATION BY MR. EVANS:

26 Q. Ms. Fleming, you have stated that when you got to
27 Weed Brothers, you just left your car and left; is that
28 right?

29 A. Yes.

1 Q. Why was it not necessary for you to go in?

2 A. Because I had told them. I told them I was going
3 to drop it off. I didn't-- what I was going to go in for?

4 Q. All right, they already knew why you were bringing
5 the car--

6 A. --Yeah, they knew.

7 Q. Had you talked to them before that day about the
8 car?

9 A. Yes, sir.

10 Q. When had you talked to them?

11 A. I called them that morning.

12 BY MR. LUMUMBA: Uh.

13 BY THE WITNESS:

14 A. Not-- I hadn't, I hadn't never talked to them
15 before about it. I called them that morning and asked them
16 how much would a windshield be.

17 Q. All right. And when you left because it is kind of
18 confusing the way it is bounced back and forth. From where
19 you parked your car, what I would like for you to do is tell
20 the ladies and gentlemen of the jury how you walked when you
21 left Weed Brothers.

22 A. When I parked my car, I left from Weed Brothers.
23 Well, I left Weed Brothers-- it's in a little cut like I left
24 out of there. I got on Carrollton Avenue, and then I got on
25 Church--

26 Q. --All right, let me stop you just a minute. Is
27 Carrollton Avenue the same street that runs between Tardy
28 Furniture and Hunger Cleaners?

29 A. Yes. That's the street I got on.

1 Q. All right, when you came out to Carrollton Avenue,
2 did you turn right or did you turn left?

3 A. (No response.)

4 Q. When you came out of that alley on to Carrollton
5 Avenue?

6 A. I turned right because I was going home.

7 Q. All right. And left would have been right there at
8 Tardy Furniture; is that correct?

9 A. Yes.

10 Q. Okay, you turned right, and you walked down that
11 street; is that correct?

12 A. Yes.

13 Q. Can you give us an idea of how far it is down that
14 street until you come into an intersection?

15 A. Down what street? Campbell?

16 Q. Carrollton.

17 A. It's not very far.

18 Q. Just a short distance?

19 A. Yes.

20 Q. What street do you come to?

21 A. I came to Campbell after I got on Church.

22 Q. Carrollton Avenue just runs right straight into
23 Campbell; is that right?

24 A. Yes.

25 Q. Which direction did you turn on Campbell?

26 A. I turned right around the corner.

27 Q. All right, which intersection are we talking
28 about? I don't want to lose you.

29 A. Sir?

1 Q. Which intersection are we talking about? You came
2 out of Weed Brothers. You turned right on Campbell?

3 A. Uh-hum.

4 Q. You go down to Carrollton Avenue?

5 A. Yes.

6 Q. From Carrollton Avenue, which street did you go to?

7 A. Church Street.

8 Q. Church Street, and you turned on Church Street.

9 A. I, when I, I turned on Campbell when I got to
10 Church Street because I was on my way back home, but I made a
11 stop.

12 Q. Okay, and that's the direction you were headed?

13 A. Yes.

14 Q. And was your house in that direction?

15 A. Yes. It was behind Piggly Wiggly.

16 Q. Okay, you have been asked about seeing the
17 Defendant. Is there any question in your mind that this is
18 the person that you saw and that spoke to you that morning?

19 A. Ain't no doubt about it. It was him.

20 Q. And we are talking about the same morning that the
21 murders occurred--

22 A. --the same morning--

23 BY MR. LUMUMBA: --I would ask that we stop
24 leading the witness. I object.

25 BY THE WITNESS: It was the same morning.

26 BY THE COURT: Wait a minute. The objection
27 is sustained.

28 BY MR. EVANS:

29 Q. What morning are we talking about that you saw him?

1 A. July the 16th.

2 Q. Okay. At any time that day did you find out--
3 well, when did you find out about the murders?

4 A. I found out about it that morning.

5 Q. About--

6 A. --the same morning.

7 Q. About what time?

8 A. It was probably about something like 10:30.

9 BY MR. EVANS: No further questions, Your
10 Honor.

11 BY THE COURT: Is she finally excused?

12 BY MR. EVANS: Not at this point. We may be
13 able to.

14 BY THE COURT: Okay, Ms. Fleming, you need to
15 go back to the witness room.

16 WITNESS LEAVES COURTROOM.

17 BY THE COURT: Why don't we take a break for
18 about 10 minutes or so. Let me see y'all up here
19 at the bench just a second. This is not on the
20 record.

21 (FOLLOWING THE MORNING RECESS ON MARCH 26,
22 1999, PROCEEDINGS CONTINUED IN OPEN COURT WITH THE
23 COURT, ALL COUNSEL, THE JURY AND THE DEFENDANT ALL
24 PRESENT:)

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
26 THE JURY AS FOLLOWS:)

27 BY MR. LUMUMBA: Mr. Freelon has just told
28 me-- Counsel informed me that they were going to
29 put Ken Pickens on the stand. He works at the Weed

1 Brothers where the lady dropped off her car.

2 **BY THE COURT:** Uh-hum.

3 BY MR. LUMUMBA: They didn't list him as a
4 witness, so we are objecting to him.

5 BY MR. HORAN: That is fine. They listed him
6 as a potential witness, Your Honor. Until this
7 testimony came up, we didn't know that we were
8 going, it was going to be necessary to put him on.
9 They are trying to impeach--

10 BY MR. EVANS: --And at this point we still
11 don't know. We may need him for rebuttal.

12 BY MR. HORAN: We are going to put him on in
13 chief, Your Honor.

14 **BY THE COURT:** Huh?

15 BY MR. HORAN: We are going to put him on in
16 chief.

17 BY MR. LUMUMBA: We object to that, Judge.
18 They didn't list him--

19 **BY THE COURT:** --Okay, well, you know what the
20 Box procedure is, boys.

21 BY MR. EVANS: Yes, sir.

22 **BY THE COURT:** So y'all can go through that
23 and tell me where you want to be on it.

24 BY MR. HORAN: Well, are they asking for a
25 continuance until, for anything? He is not-- they
26 are not surprised. I will admit that he was not
27 listed as a potential witness.

28 **BY THE COURT:** The first option is they have
29 to be able to talk to him which I assume they have

1 done.

2 BY MR. HORAN: Right. They have got a taped
3 statement.

4 BY THE COURT: The second thing is they have
5 to the decide whether or not they want a
6 continuance or whether they want to go ahead. If
7 they want a continuance, then y'all have to decide
8 whether y'all want to call him.

9 BY MR. HORAN: Yes, sir. We want to call him.

10 BY MR. LUMUMBA: Also, we haven't gotten
11 anything from them. We haven't gotten anything
12 from them, what they intend for him to testify to.
13 They haven't said.

14 BY THE COURT: Well, of course, y'all all know
15 what the Box procedure is when we get into this
16 situation.

17 BY MR. HORAN: Okay, we will discuss that.

18 BY MR. LUMUMBA: Is he supposed to be the next
19 person?

20 BY MR. HORAN: No.

21 BY MR. LUMUMBA: Oh, okay. Well, before they
22 put him on.

23 END BENCH CONFERENCE.

24 BY THE COURT: Who will you have next?

25 BY MR. HORAN: Steve Byrd. He has not been
26 sworn, Your Honor.

27 (Mr. Freelon leaves the courtroom. Witness
28 enters courtroom.)

29 BY THE COURT: Raise your right hand.

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STEVE BYRD,

a white male called to testify as a witness by the State of Mississippi, having first been duly sworn, testified as follows, to-wit:

BY THE COURT: Have a seat, and state your name for the record.

BY THE WITNESS: My name is Steve Byrd.

BY MR. HORAN: May I proceed, Your Honor?

BY THE COURT: Uh-hum.

DIRECT EXAMINATION BY MR. HORAN:

Q. Mr. Byrd, how are you employed?

A. I am employed as a forensic scientist specializing in firearms evidence examinations.

Q. Have you received any particular training that qualifies you for that particular job?

A. Yes, sir.

Q. What training have you received and education in that regard?

A. For the first year I was employed at the laboratory I underwent an apprenticeship type training. In other words, I worked one on one with firearms examiners that were employed at that time. I have attended the Smith and Wesson and Rivers Armors School, the FBI Academy in Quantico, Virginia, and several other training seminars that have been specifically for firearms examiners.

Q. And do you have any, what the law people refer to as on-the-job training?

A. Yes, sir.

Q. What would that be?

1 A. Since my employment at the laboratory, I have been
2 employed full time doing firearms examinations.

3 Q. And do exhibits come into your possession or come
4 to you for the purpose of determining whether or not items or
5 these particular exhibits were fired from weapons?

6 A. Yes, sir.

7 Q. And these exhibits, they usually come from law
8 enforcement agency; is that right?

9 A. Yes, sir.

10 Q. Agencies throughout the state?

11 A. Yes, sir.

12 Q. You stated a few amounts moments ago that you are a
13 firearms examiner. Have you ever been qualified as an expert
14 in the courts of the State of Mississippi as an expert in the
15 field of firearms examination, Mr. Byrd?

16 A. Yes, sir. I have.

17 Q. Approximately how many times?

18 A. I would say approximately 200 occasions.

19 BY MR. HORAN: Your Honor, I tender him as an
20 expert in the field of firearms examination.

21 BY MR. LUMUMBA: I have no objections to Mr.
22 Byrd's qualifications, Judge.

23 **BY THE COURT:** The Court accepts him as an
24 expert in that field.

25 BY MR. HORAN: Thank you, Your Honor. If the
26 Court will indulge me just a minute.

27 BY MR. HORAN:

28 Q. Mr. Byrd, I want to hand you some exhibits, and if
29 you would, please inspect them. Tell me whether or not you

1 can make a determination as to whether or not they, that you
2 have ever seen them before. State's Exhibit 76-- strike
3 that. State's Exhibit 76 has been introduced into evidence.
4 State's Exhibit number 89, would you look at those, please,
5 sir.

6 A. (Pause) Yes, sir. I have.

7 Q. Can you identify those?

8 A. Yes, sir; I can.

9 Q. How can you identify those?

10 A. The containers have the State Crime Laboratory case
11 number, exhibit number, and my initials on them.

12 Q. If you would, would you identify the State Crime
13 Lab exhibit number on both of those particular exhibits?

14 A. The item marked State's Exhibit 76 has the Crime
15 Laboratory case number J96353601C, Exhibit 66 on it. The
16 item marked State's Exhibit 89 has the Crime Laboratory, same
17 case number, J96353601C with the Exhibit 61 on it.

18 Q. What number is that?

19 A. State's Exhibit 89.

20 Q. Right. I hand you also four other exhibits. If
21 you would, identify these four exhibits, please, sir, if you
22 can.

23 A. By the State's exhibit or the laboratory?

24 Q. By the State's exhibit. I mean-- excuse me, by the
25 lab exhibit number first.

26 A. Okay, the lab exhibit number on this item, which it
27 bears the same Crime Laboratory case number is Exhibit 67,
28 and the State's Exhibit is 75.

29 Q. All right.

1 A. State's Exhibit 78 bears the Crime Laboratory case
2 number Exhibit 32. State's Exhibit 79 bears the Crime
3 Laboratory case number Exhibit 33. And State's Exhibit 77
4 bears the Crime Laboratory case number 31.

5 Q. What exhibit number, Crime Lab exhibit number 32,
6 what State's Exhibit number is it? If you would, repeat that
7 for me. Is that 78?

8 A. That's correct.

9 Q. I want to hand you State's Exhibit 87 and State's
10 Exhibit 88, and tell me whether or not you have ever seen
11 those two items before?

12 A. Yes, sir.

13 Q. And what are they?

14 A. They are plastic bags which contain plastic vials
15 with the identifying marks on them and with the fragments and
16 projectiles that I examined.

17 Q. Did you receive those from Dr. Steven Hayne?

18 A. They were submitted from his office; yes, sir.

19 Q. Would you identify the lab exhibit number on those
20 two packages or the contents of those two packages.

21 A. State's Exhibit 88 bears the Crime Laboratory case
22 number 353601C as I described earlier, and it is Exhibit 23
23 at the laboratory. And State's Exhibit 87 is Crime
24 Laboratory Exhibit number 8.

25 Q. That is 87?

26 A. That's correct.

27 Q. Okay, and State's Exhibit-- I mean, excuse me, lab
28 exhibit number 33, what State exhibit is it?

29 A. It will be 79.

1 Q. I want you to pick up Exhibit number 89, if you
2 would, 75 and 76. Did you do me an analysis on those three
3 particular exhibits?

4 A. Yes, sir. I did.

5 Q. Would you explain to the Court and the jury what
6 you did.

7 A. In the course of examining any type proponent that
8 has been discharged in a firearm or it could have been
9 discharged in a firearm, the first thing would be done would
10 be to examine visually. Microscopic comparisons of these
11 items can be made to known standards at the laboratory.
12 These are made to determine or classify a projectile, and
13 that's what was done in the case of these projectiles. When
14 a firearm is manufactured, its class characteristics are
15 determined by the manufacturer.

16 The most common class characteristics associated
17 with a firearm that has rifling in the barrel would be the
18 caliber, the number of lands and grooves, the direction that
19 they twist down the bore. These lands and grooves that I am
20 referring to are normally referred to as rifling. They are
21 normally impressed into a projectile, and these projectiles
22 were examined visually and microscopically to examine these
23 characteristics.

24 Q. And as a result of those examinations, did you come
25 to a conclusion as to those three exhibits?

26 A. Yes, sir.

27 Q. What was your conclusion?

28 A. To start with, the examination to determine the
29 class characteristics; these projectiles are .380 caliber

1 with six lands and grooves with a right hand twist. To go a
2 step further, all the characteristics that I just described
3 are called class characteristics and are common to a group of
4 guns. To say anything further about the origin of these
5 projectiles or possible common origin of them, you have to
6 have individual characteristics. Now these are microscopic
7 characteristics that are viewed under the microscope. And in
8 the case of these three projectiles they had sufficient
9 individual characteristics to say that they were all, in
10 fact, discharged in the same firearm.

11 Q. So Exhibits 89, 75 and 76 were propelled out of the
12 same weapon basically?

13 A. That's correct.

14 BY MR. HORAN: Your Honor, I would like to
15 have these published to the jury if I could.

16 BY THE COURT: They are admitted?

17 BY MR. HORAN: They have been admitted.

18 BY THE COURT: Okay, you can do that.

19 BY MR. HORAN: No, sir. 75 has not.

20 BY THE COURT: Do you move for its admission?

21 BY MR. HORAN: I'm going to have to tie it in
22 with another witness, Your Honor.

23 (Exhibit S-75 was not passed to the jury.

24 Exhibits S-89 and S-76 were passed to the jury.)

25 BY MR. HORAN:

26 Q. Mr. Byrd, did you do any additional examinations
27 with reference to State's Exhibits 77 and 78 in relationship
28 to the three exhibits that you have just testified to?

29 A. Yes, sir. I did.

1 Q. And what did you do in that regard?

2 A. I made the same visual and microscopic comparisons
3 of the three projectiles that we spoke of earlier to these
4 projectiles.

5 Q. Did you come to a conclusion as to whether or not
6 these projectiles contained the same class characteristics as
7 Exhibits, I believe 89, 75 and 76?

8 A. Yes, sir.

9 Q. And what was your conclusion on that?

10 A. These two projectiles do bear the same class
11 characteristics as those three projectiles.

12 Q. State's Exhibit 87-- excuse me; strike that. 88,
13 did you make a comparison to that particular exhibit and the
14 three previously testified to Exhibits 75, 76 and 89?

15 A. Yes, sir.

16 Q. And were you able to come to a conclusion as to
17 that particular exhibit?

18 A. Yes, sir.

19 Q. What was that conclusion?

20 A. It bears similarities to the class characteristics
21 on the three previously mentioned projectiles.

22 Q. Now Mr. Byrd, I will ask you this. Do you consider
23 yourself a relatively conservative firearms examiner?

24 A. Yes, sir.

25 Q. Do you err on the side of caution?

26 A. Yes, sir. I consider myself to be a conservative
27 firearms examiner.

28 Q. I want to hand you State's Exhibits 80 through I
29 believe 85. Can you tell me basically if you will look at

1 those, and tell me first of all whether or not you can
2 identify those. Can you do that for me, sir? Can you
3 identify those packages?

4 A. Yes, sir. I can.

5 Q. Okay. Did you come to a conclusion -- what is
6 inside those particular boxes?

7 A. Each of these boxes contain a Crime Laboratory case
8 number, exhibit number as they were described when they came
9 to the Laboratory, and my initials. Each of these boxes when
10 submitted contained a fired cartridge casing or the brass
11 portion of the cartridge.

12 Q. What caliber?

13 A. They would be .380 auto caliber.

14 Q. Mr. Byrd, would you explain to the jury what you
15 mean by .380 caliber? What is that?

16 A. The most common .380 automatic caliber firearm is
17 a semi-automatic handgun or a pistol. It fires a cartridge
18 or a projectile that has-- excuse me, a cartridge that
19 travels somewhere in the approximately 900 to 1,000 feet per
20 second.

21 Q. Okay, and your opinions that you have given here
22 today, are they based on a reasonable scientific certainty?

23 A. Yes, sir.

24 BY MR. HORAN: I would like to have these
25 exhibits published to the jury also, Your Honor.

26 BY THE COURT: If they have been admitted, you
27 can do it.

28 BY MR. HORAN: I'm going to make sure.

29 (Exhibits passed to the jury.)

1 BY MR. HORAN:

2 Q. So your testimony here today, Mr. Byrd, is that you
3 matched two projectiles-- three projectiles having been fired
4 out of the same weapon. Those would have been Exhibits 75,
5 76 and 89?

6 A. That's correct.

7 Q. And you found similar class characteristics on two
8 other projectiles. That would be 77 and 78?

9 A. Well, those projectiles also had similarities and
10 individual characteristics, individual characteristics, but
11 yes, sir; they did bear the same class characteristics also.

12 Q. On top of class characteristics, they had
13 individual characteristics that were similar to the other
14 three which you testified to matched each other?

15 A. That's correct.

16 Q. How do you go about doing these examinations, Mr.
17 Byrd?

18 A. These examinations are performed under a comparison
19 microscope. Basically a comparison microscope is two
20 microscopes in one. You have two fields of view, and those
21 two fields of view are combined overhead by what is called a
22 comparison bridge. What it does is it actually overlays them
23 so you can look at two objects side by side, and that's how I
24 perform these analyses.

25 BY MR. HORAN: Court will indulge me just a
26 moment.

27 BY MR. HORAN:

28 Q. Mr. Byrd, what was the requested examination as to
29 the three exhibits that you matched? Why were they

1 submitted to your lab? What did the evidence submission
2 form-- was it for the purpose to determine whether or not
3 they, in fact, matched?

4 A. Yes, sir. I was to compare the three projectiles
5 to each other.

6 Q. And the other projectiles that were submitted to
7 you?

8 A. That's correct.

9 BY MR. HORAN: I tender.

10 BY MR. LUMUMBA: May I proceed, Judge?

11 BY THE COURT: Yes, sir.

12 BY MR. HORAN: Your Honor, I would like to go
13 ahead and introduce this into evidence on the
14 condition that I will tie it in later, but I will
15 not publish it to the jury until that evidence is
16 presented.

17 BY MR. LUMUMBA: Judge, I don't think I'm
18 going to have an objection when the time comes, but
19 if they are not going to publish, I don't know why
20 it has to be introduced right now.

21 BY MR. HORAN: I will wait. If he has any
22 objection at all, I will wait.

23 BY MR. LUMUMBA: Okay.

24 BY THE COURT: Okay.

25 CROSS-EXAMINATION BY MR. LUMUMBA:

26 Q. Good morning, Mr. Byrd.

27 A. Morning.

28 Q. I just have a couple of questions, Mr. Byrd.

29 Basically, you are trying to determine if a particular gun

1 shot a projectile which is what we commonly call a bullet,
2 some of us; is that correct?

3 A. The primary duties at the laboratory are to examine
4 projectiles and determine whether or not they were discharged
5 to a submitted firearm or in this case if projectiles are
6 compared, could they have come from a common origin; yes,
7 sir.

8 Q. So there is nothing that you actually have done
9 that would in any way be able to assist this jury or tell
10 this jury that Mr. Flowers fired anything that you examined.
11 That wouldn't be anything you would be able to give to us or
12 would not give to us, would you?

13 A. No, sir.

14 Q. Okay. Now and actually, you can't say who did. Is
15 that not true?

16 A. No, sir.

17 Q. Okay, well, let me ask you this though. When you
18 guys go and try-- do sometimes if you know the name of the
19 person who owns a weapon; you follow me to this point? You
20 know the name. Can you check and match the name, the serial
21 number or something like that and find out -- in some states
22 don't they have registration laws where when they, this
23 firearm has to be kept for a couple of days before they give
24 the firearm to the person buying the firearm? What I'm
25 talking about, pistols now. Do you understand what I'm
26 saying? Pistols. And they are test fired so that ballistic
27 evidence is on file with that weapon. Does that occur in
28 some states?

29 A. Some states may require that you register the

1 firearm to actually possess it and carry it. I'm not sure
2 that they actually-- in some cities they may require you to
3 discharge that firearm to have known test standards, but not
4 in this state.

5 Q. Okay, I'm sorry; I said that wrong. Do they
6 sometimes when they have a situation where the police or some
7 other authority has to hold the gun for a couple of days;
8 they discharge it, the police or the other authorities, the
9 sheriff's department, and keep on file some kind of
10 ballistics on the weapon?

11 A. They can do that; yes, sir.

12 Q. Okay. So that means that if you knew the right
13 name of the person who, if that is the situation, if you
14 actually know the right name of the person who possessed the
15 weapon, whose weapon it was, that might be able to lead you
16 to some identification information as to ballistics of the
17 weapon if that gun comes from a state where that practice is
18 fluent; is that right?

19 A. If there were test fires that were discharged in a
20 firearm and they would be obtainable, you could make those
21 comparisons. But if I understand you correctly, it would
22 have to, the gun would have to originate where that would be
23 a request or a law of that state, whether you would have to
24 register the firearm and supply those discharged components
25 to a laboratory or somebody to retain those standards.

26 Q. Right. They would have, they would be on file, and
27 they could check if they got the right name of who owns the
28 gun, check and maybe find out what the ballistics are. And
29 that is only in that scenario which we just pointed out; is

1 that correct?

2 A. Yes, sir.

3 Q. Okay. So in that way maybe ballistics could lead
4 you to some kind of identification at least of-- I mean,
5 excuse me. In that way it leads, at least there would be
6 some relationship between the ballistics and who owned the
7 gun; isn't that correct?

8 A. Yes, sir. If they actually had to register the
9 firearm and submit it long enough for it to be discharged,
10 the person that would be retaining or obtaining those
11 discharged components, the cartridge casings and the
12 projectiles, would keep those test projectiles, and it would
13 be associated with the firearm that was submitted there with
14 that serial number. And if that firearm and that serial
15 number was traced back to the individual that had possession
16 of the firearm or registered, yes, you could associate it in
17 that manner.

18 Q. Okay, but even in one of those states if somebody
19 misled you about the name of the person they got the gun
20 from, that might throw a monkey wrench into that
21 identification procedure; right?

22 A. Well, maybe the name itself, but the firearm and
23 the serial number that is associated with that firearm would
24 be, you couldn't do that; no, sir.

25 Q. If the serial number is still on the firearm;
26 correct?

27 A. Yes, sir.

28 BY MR. LUMUMBA: Okay. Thank you. I have no
29 further questions.

1 REDIRECT EXAMINATION BY MR. HORAN:

2 Q. The projectiles that you testified about, State's
3 Exhibits 89 and 75 and 76, are they consistent with having
4 been fired from a .380 automatic caliber? Did you testify to
5 that?

6 BY MR. LUMUMBA: --Excuse me; excuse me. I
7 didn't ask any questions on that. That is beyond
8 the scope of cross-examination. May we approach?

9 BY MR. HORAN: That's the only reason I asked
10 the question about the caliber of a weapon.

11 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
12 THE JURY AS FOLLOWS:)

13 BY MR. LUMUMBA: I didn't ask a single
14 question about that.

15 BY MR. HORAN: Okay, I will withdraw. It's
16 not that big a deal. I thought he went into it. I
17 will withdraw.

18 BY THE COURT: I thought you had asked it on
19 direct.

20 BY MR. LUMUMBA: I thought he did too.

21 END BENCH CONFERENCE.

22 BY MR. HORAN: I think I did cover it on
23 direct, but I'm not sure. No further questions.

24 BY THE COURT: Is he finally excused?

25 BY MR. HORAN: Yes, sir.

26 BY THE COURT: Mr. Byrd, you are free to go.

27 WITNESS EXCUSED.

28 BY THE COURT: Who do you have next?

29 BY MR. EVANS: Edward McChristian.

1 (Witness enters courtroom.)

2 BY THE COURT: Mr. McChristian, have you been
3 sworn?

4 BY THE WITNESS: No, sir.

5 (NOTE: Mr. Freelon and Mr. Horan are not
6 present.)

7 EDWARD McCHRISTIAN,

8 a black male called to testify as a witness by the State of
9 Mississippi, having first been duly sworn, testified as
10 follows, to-wit:

11 DIRECT EXAMINATION BY MR. EVANS:

12 Q. State your name for the record, please.

13 A. Edward McChristian.

14 Q. Mr. McChristian, where do you live?

15 A. 603 Academy.

16 Q. And where is that located? In what town?

17 A. Winona, Mississippi.

18 Q. All right, in relationship-- first let me ask you;
19 do you know where Tardy Furniture is located?

20 A. Yes.

21 Q. In relationship to Tardy Furniture about how far
22 away is your house?

23 A. Not even a mile. I don't really know.

24 Q. Can you give me an idea in blocks?

25 A. Well, maybe about four long blocks.

26 Q. Okay, I want to direct your attention back to the
27 day of the murders at Tardy Furniture. Do you remember that
28 day?

29 A. Yes, I do.

1 Q. Do you remember seeing anybody walk by your house
2 early that morning?

3 A. Yes, I do.

4 Q. Before I get into that, what were you doing there
5 at your house that morning? Was anyone with you?

6 A. Yeah, I had two friends sitting on the porch with
7 me.

8 Q. And who were they?

9 A. Clarence Forrest and Bernard Seal.

10 Q. Okay, and while y'all were sitting on your porch,
11 who, if anyone, did you see walk by your house?

12 A. Curtis Flowers.

13 Q. How long had you known Curtis Flowers at that time?

14 A. Well, I had known him, but I just hadn't ever
15 associated with him.

16 Q. Okay, which direction was he going when you saw
17 him?

18 A. He was coming up Academy Street coming south, going
19 north.

20 Q. Okay, would he be going toward or away from Tardy
21 Furniture?

22 A. Well, yeah, he could go that way, yeah.

23 Q. Toward?

24 A. Yeah.

25 Q. All right, would he be going toward or coming away
26 from the direction of where the factory known as Angelica is
27 located?

28 A. He was coming from that way.

29 Q. Coming from the direction of Angelica's?

1 A. Right.

2 Q. And about what time did you see him?

3 A. Between 7:30 and 8 o'clock.

4 BY MR. LUMUMBA: I'm sorry; I didn't hear
5 that.

6 BY THE COURT: He said between 7:30 and 8
7 o'clock.

8 BY MR. EVANS:

9 Q. Do you see the person that walked by your house
10 from the direction of Angelica about 7:30 or 8 o'clock on the
11 morning of the murders?

12 A. Right.

13 Q. Would you point to him and identify him, please?

14 A. That's right there he is.

15 BY MR. EVANS: May the record reflect he has
16 identified the Defendant in this case, Curtis
17 Flowers?

18 BY THE COURT: Let the record reflect that.

19 BY MR. EVANS: Tender the witness.

20 CROSS-EXAMINATION BY MR. LUMUMBA:

21 Q. Mr. McChristian, good after-- no, good morning
22 still.

23 A. Good morning.

24 Q. Good morning. Mr. McChristian, you are not in
25 any-- Counsel asked you questions about things that happened
26 on what you believe to be the day of the, the day of the
27 deaths at Tardy Furniture. You do remember that occasion in
28 terms of that was something that was fairly well publicized
29 in the area for a while. Is that correct?

1 A. Yeah.

2 Q. About the deaths; is that correct?

3 A. Right.

4 Q. Okay. And but in any event, you are not in any way
5 saying that you saw Mr. Flowers at any time doing anything
6 that made it look like he had been involved in any murders;
7 right?

8 A. No, he didn't look like it to me.

9 Q. Okay. And in fact, you sit on that porch a lot of
10 times, don't you?

11 A. Right.

12 Q. Okay, and in fact, you sit on that porch quite
13 frequently in the morning, don't you?

14 A. Right.

15 Q. And would you say that your friends, you and your
16 friends sit out there most mornings, do you?

17 A. Well, not now, but yeah.

18 Q. But you did back then at that time?

19 A. Yeah. Right.

20 Q. And that was the summer; nice days out and things
21 of that nature?

22 A. Right.

23 Q. Is that correct?

24 A. Right.

25 Q. Okay, now the other thing is that the first time
26 you actually talked to anybody about this case from the
27 police department, you didn't talk to anybody on the 16th or
28 on the day that this incident occurred, did you?

29 A. No, I didn't talk to them the same day.

1 Q. Okay, and it would have been quite a while before
2 you talked to them. Would it be safe to say? When did you
3 talk to them? About how long was it after the incident if
4 you can recall?

5 A. I can't quite recall.

6 Q. It would have been months?

7 A. I don't really know when they come and got me. I
8 don't know.

9 Q. Okay. But anyway, time had passed; is that
10 correct?

11 A. Yeah.

12 Q. Okay. And the other thing I wanted to point out to
13 you. Let me just take a real quick look here at this Exhibit
14 which is D-7.

15 (Mr. Horan enters the courtroom.)

16 Q. You live on Academy Street; is that correct?

17 A. Right.

18 Q. Okay, can you locate on D-7-- I'm pointing to what
19 seems to be Academy Street. If you possibly can, can you
20 locate for me, because I don't really know, about where you
21 probably would live?

22 A. (Witness points on Exhibit D-7.)

23 Q. Okay, somewhere and I think that you have pointed
24 right here on Academy not too far from Houston; is that
25 correct?

26 A. Right. Right there.

27 Q. Okay. Well, when a person is on your street, they
28 are really going east and west, aren't they? Well, let me
29 see; that north and south. They are going north and south;

1 right?

2 A. Right.

3 Q. Is that correct?

4 A. Right.

5 Q. Okay. You have got to speak up just a little bit.

6 A. Right.

7 Q. Okay. So they are going north and south. Actually
8 Tardy's is quite a bit-- what would that be? That would be,
9 let's see; north and south. Tardy's is actually east. That
10 is quite a bit east of Academy Street; right?

11 A. Right.

12 Q. So you don't know whether anybody is going--

13 A. --oh, no. I don't know.

14 Q. I mean people could be going any number of places--

15 A. --That's right--

16 Q. --on that street?

17 A. That's right.

18 Q. And actually, what do you call it? That place that
19 he mentioned - Angelica. You don't, also don't know that a
20 person-- you didn't have any reason to believe when you saw
21 Mr. Flowers, whenever you saw him, that he was coming from
22 Angelica? You don't have any reason to believe that, do
23 you?

24 A. No.

25 Q. Okay. And wouldn't it be safe to say that
26 actually, a person coming, walking on your street at some
27 point could turn and go right up Powell and go to over here
28 across the street, and you have got McNutt. Is that
29 correct? McNutt is up here, I think.

1 A. That's in the project.

2 Q. Yeah, in the project, McNutt; is that correct?

3 A. Right.

4 Q. And also you have got Cade over here; is that
5 correct?

6 A. Right.

7 Q. Okay, so you have got any number of streets?

8 A. That's right.

9 Q. Okay, and you have got stores all up and down 51;
10 is that correct?

11 A. That's right.

12 Q. Okay. So it's not unusual to see somebody walking
13 down your street?

14 A. Oh, no, not my street.

15 Q. Okay, and it was nothing, it was nothing unusual
16 about any time that you saw Mr. Flowers walking down the
17 street; is that correct?

18 A. No.

19 Q. Did the date that you think you saw him, he wasn't
20 running or anything like that?

21 A. No.

22 Q. Didn't seem to be upset or excited about anything?

23 A. No.

24 Q. Certainly didn't have a gun that you saw?

25 A. I couldn't tell no way.

26 Q. You didn't see anything in his hands?

27 A. No.

28 Q. Pardon?

29 A. No.

1 Q. Okay. Nobody was with him?

2 A. Nobody was with him.

3 Q. Not in a brown car?

4 A. I didn't see no car.

5 (Mr. Lumumba confers with his client.)

6 Q. Yeah, you know where that Angelica plant is at?

7 Are you familiar with where the Angelica plant is at?

8 A. Right.

9 Q. Okay, Angelica, that plant is also east of your
10 house; isn't that true?

11 A. Yeah.

12 Q. Okay. And you never saw Mr. Flowers walking east
13 from your house at all, did you?

14 A. No, I didn't see him walking east.

15 Q. So you don't have any reason to believe that he
16 ever, and you never saw him coming from the east either, did
17 you?

18 A. No, I just seen him coming from south.

19 Q. Okay, and I'm sorry to be asking you these
20 questions, but I guess my point is you never saw him coming
21 actually from the direction of the Angelica plant since that
22 is actually east of you; is that correct?

23 A. (Witness nods his head.)

24 Q. Is that true?

25 A. I just seen him on Academy coming there.

26 Q. And you never saw him going to Tardy's because that
27 is actually east of you also; isn't that correct?

28 A. I ain't seen none of that.

29 BY MR. LUMUMBA: All right. Thank you.

1 REDIRECT EXAMINATION BY MR. EVANS:

2 Q. I will show you on the map, Exhibit 7; this is the
3 street right here that is marked as Academy Street; is that
4 correct?

5 A. Right.

6 Q. If you would, step down for just a second over here
7 in front of the jury. You may have to do this twice so that
8 the jury can see. But this is Academy Street right here that
9 you lived on; is that correct?

10 A. Right.

11 Q. And this is where Angelica is right here; is that
12 correct, the end of Angelica Drive?

13 A. Right.

14 Q. So it's actually south of your house to Angelica;
15 is that correct?

16 A. Yes, sir.

17 Q. Okay, and you saw him coming from Angelica walking
18 down Academy Street--

19 BY MR. LUMUMBA: --Objection.

20 BY THE WITNESS:

21 A. --I didn't see him coming from -- I seen him on
22 Academy.

23 Q. Well, I'm not saying you saw him at Angelica, but
24 he was coming from that general direction walking--

25 BY MR. LUMUMBA: --Judge, I object. That is
26 not what the man testified to.

27 BY MR. EVANS: That is exactly what he
28 testified to.

29 BY MR. LUMUMBA: He testified he saw him on

1 Academy. Angelica is way east of--

2 BY MR. EVANS: --No, sir. It is not east, and
3 the map clearly shows it's south.

4 BY THE COURT: Well, wait a minute.

5 BY MR. LUMUMBA: Angelica Street, Angelica's
6 plant--

7 BY MR. EVANS: --Angelica's plant is south.
8 That is Angelica's plant right there.

9 BY MR. LUMUMBA: Let the witness testify. I'm
10 sorry.

11 BY MR. EVANS:

12 Q. Okay. Was he coming from or going toward the
13 direction that Angelica is? Was he going this way, or was he
14 going this way?

15 A. He was going this way. (Witness pointing on Exhibit
16 D-7.)

17 Q. Okay. Let's step down to where the rest of the
18 jury can see. You pointed out that this is Academy Street
19 that you lived on; is that correct?

20 A. Right.

21 Q. Angelica is over here on this side; is that right?

22 A. Right.

23 Q. And he was headed this direction which would be in
24 the general direction away from Angelica when you saw him
25 walking?

26 A. Right.

27 Q. Thank you.

28 A. (Witness resumes witness stand.)

29 BY MR. EVANS: Nothing further, Your Honor.

1 **BY THE COURT:** Is he finally excused?

2 BY MR. EVANS: Yes, sir.

3 **BY THE COURT:** You are free to go, sir.

4 WITNESS EXCUSED.

5 **BY THE COURT:** Who do you have next?

6 BY MR. HORAN: Can we approach for a minute?

7 **BY THE COURT:** Uh-hum.

8 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
9 THE JURY AS FOLLOWS:)

10 BY MR. EVANS: Judge, I think Kevin said
11 something about-- well, I will wait until they get
12 up here.

13 BY MR. HORAN: Judge, I have got a motion in
14 limine that may take a little time, and I want to
15 address the matter regarding Mr. Pickens, the
16 witness that we anticipate we will call as a
17 witness. I would like to do that right now and ask
18 them--

19 BY MR. EVANS: --Our next witness is going to
20 be fairly lengthy if we don't put him on.

21 **BY THE COURT:** All right, there is a motion in
22 limine?

23 BY MR. HORAN: Yes, sir. I have a motion in
24 limine that is going to take some time for us to go
25 through that. I need a ruling prior to my
26 examination.

27 **BY THE COURT:** Huh?

28 BY MR. HORAN: I need a ruling on it prior to
29 my examination of the witness.

1 **BY THE COURT:** Okay.

2 END BENCH CONFERENCE.

3 **BY THE COURT:** Ladies and gentlemen, they have
4 got some matters I have to take up outside of
5 y'all's presence. They have made arrangements for
6 you to have lunch. I think they want you there at
7 12:00 anyhow, so you may get there a little bit
8 early. But we are going to take the lunch break
9 now. We will start back at 1 o'clock. Everybody
10 else just stay seated because the court is still in
11 session.

12 (JURY LEAVES THE COURTROOM FOR LUNCH AT 11:30
13 A.M.)

14 **BY THE COURT:** Everybody that is going to get
15 out has got to leave right now. Everybody that is
16 going to stay has got to sit down. I have got
17 other business to tend to right now. Okay, Mr.
18 Horan.

19 BY MR. HORAN: Yes, sir. As this Court wells
20 knows, the State anticipates calling Mr. Ken
21 Pickens, maybe as the next witness. We don't know
22 at this time. Mr. Pickens was an employee at Weed
23 Brothers at the time that the witness, Mary
24 Jeanette Fleming, dropped the automobile off that
25 she has testified about in order to put a
26 windshield in it.

27 For the benefit of the record and the Court's
28 consideration, Mr. Pickens was discovered to the
29 State as a potential witness by the Defendant in

1 September of 1998. We were also provided a copy of
2 a taped telephone conversation with Mr. Pickens. I
3 can't remember which attorney interviewed Mr.
4 Pickens on the phone, whether it was Mr. Freelon or
5 Mr. Lumumba, sometime after that, I believe.

6 But nonetheless, the Court is well aware that
7 you have to make a Box determination.

8 **BY THE COURT:** Where did that tape come from?

9 BY MR. HORAN: Mr. Lumumba.

10 **BY THE COURT:** Okay.

11 BY MR. HORAN: He can correct me if I am
12 wrong, but either he or Mr. Freelon or someone in
13 their office interviewed Mr. Pickens six and a half
14 months ago. When you look at a Box of whether or
15 not the Court would allow it, it would turn first
16 on whether or not there is any surprise, and was it
17 intentional on the part of the State to hold this
18 particular witness back in order to gain some
19 tactical advantage against the Defendant. I don't
20 believe Mr. Lumumba will represent to the Court
21 that he is surprised by what Mr. Pickens will
22 testify to or that Mr. Pickens would be a potential
23 witness in this case in general. It is certainly
24 not a witness that they did not know about.

25 If the Court is inclined to grant a
26 continuance, there are numerous cases that the
27 reason, that say the reason you grant the
28 continuance is to give the defendant an opportunity
29 to interview the witness or examine the new

1 evidence, and at that point in time determine
2 whether or not the Court, determine whether or not,
3 you know, it's going to be admissible or not, if
4 they need anything in addition to rebut the proof
5 that the State intends to put on.

6 In this particular case they are not surprised
7 in any way. They have known about Mr. Pickens. It
8 became relevant, more relevant to the State at the
9 time of the cross-examination of Mary Jeanette
10 Fleming and the things that Mr. Lumumba questioned
11 her about. To be quite honest with you, Judge, the
12 State has not taken a statement from Mr. Pickens,
13 have not interviewed him today, but anticipate we
14 would call him. I haven't talked to-- I have not
15 talked to him today. I think Mr. Johnson in my
16 office briefly spoke with him about his knowledge
17 of the case. And that's all I have on that
18 particular.

19 **BY THE COURT:** When did you get the
20 statement?

21 **BY MR. HORAN:** Get the statement from Counsel
22 for the Defendant? I have got that statement, Your
23 Honor.

24 **BY THE COURT:** I don't want the statement. I
25 want to know when you got it.

26 **BY MR. HORAN:** Yes, sir. I mean what I'm
27 saying, I got the discovery, the notice of
28 discovery on him.

29 **BY THE COURT:** When did you get the

1 statement?

2 BY MR. HORAN: September the--

3 (Pause while shows a document to Mr. Lumumba.)

4 BY MR. HORAN: Did y'all send that with that?

5 BY THE COURT: The point I'm making, you
6 didn't get it this week?

7 BY MR. HORAN: September the 7th.

8 BY THE COURT: You didn't get it this week?

9 BY MR. HORAN: Oh, no.

10 BY THE COURT: Okay, all right. Okay, Mr.
11 Lumumba.

12 BY MR. LUMUMBA: Yeah. Yeah, I believe that
13 it's-- I can't recall the exact day. That document
14 has September the 7th on it. They would have had
15 it then or before then, okay, because sometimes we
16 send them stuff and then later on send out the
17 notice of compliance with reciprocal discovery.
18 Judge, I would object. You know, we-- they having
19 had it for that long, certainly they have had
20 plenty of time to amend their witness list and to
21 put down who they want.

22 (Mr. Freelon enters the courtroom.)

23 Now here is the other thing. We have not
24 received at this time any statement from them of
25 what they intend Mr. Pickens to testify to, and
26 until we do that, they haven't complied even to
27 this point with the discovery rules. They have to
28 give us a statement. We don't need the name and
29 the address obviously, but we are entitled to a

1 statement of what they expect to draw from this
2 witness.

3 Now I would point out to the Court; the fact
4 that we know who the witness is and the fact that
5 we have talked to him does not excuse that. There
6 are cases where a whole Box debates erupt around
7 where a person is called in as a witness and then
8 someone else goes into an absolutely different area
9 than what was provided in the discovery, and the
10 courts have ruled that that causes the same kind of
11 Box problems as if you didn't know who the witness
12 was at all. A clear example that I can recall is
13 when an expert witness comes in and testifies to
14 one matter that he is noticed for, and then another
15 matter they come up and put up. I think it's the
16 same thing with any witness really, and the rule
17 does require that.

18 So I would, I don't even want to respond--
19 first of all, I think they are trying to get a
20 tactical advantage because they are aware that we
21 intend to call Mr. Pickens, and, of course, if they
22 call him, they can do direct and then redirect.
23 They have two shots at him, and we are limited to
24 one. So I think they are, but I don't know if
25 there is any law to deal with that. But I do know
26 this is that we are entitled to a statement of what
27 they anticipated getting out of Mr. Pickens before
28 we even make a decision as to whether we need a
29 continuance or whether we want to object or what.

1 We don't have a statement from them of what they
2 intend to get out of Mr. Pickens and of what their
3 testimony, what is the area of their inquiry and
4 what it will be limited to.

5 So I do object because I think that they had
6 plenty of time to let us know. But number two, I
7 am also asking that if the Court does not reject
8 their attempt to bring him right now, then what I
9 would like for them to do is to give me a statement
10 on what they intend to get out of him.

11 **BY THE COURT:** Okay, how long--

12 **BY MR. LUMUMBA:** --One second.

13 **BY THE COURT:** You have known-- excuse me.

14 **BY MR. LUMUMBA:** --Mr. Freelon wants to say
15 something.

16 (Defense Counsel confer briefly.)

17 **BY MR. HORAN:** Your Honor.

18 **BY THE COURT:** Just a minute.

19 **BY MR. LUMUMBA:** Basically, I'm sorry, Judge.
20 What was your inquiry?

21 **BY THE COURT:** My question is y'all have known
22 about this witness since at least September; is
23 that right?

24 **BY MR. LUMUMBA:** Oh, yeah.

25 **BY THE COURT:** Okay, and you have had those
26 statements, I guess, since that time.

27 **BY MR. LUMUMBA:** At least.

28 **BY THE COURT:** So you are not surprised by
29 those, that information at this time.

1 BY MR. LUMUMBA: I'm not surprised by what we
2 knew about it; right.

3 BY THE COURT: Okay. Let me ask the State
4 then. Do you anticipate that he is going to
5 testify to things other than what is in those
6 statements that you have been furnished?

7 BY MR. HORAN: Judge, to be quite honest with
8 the Court, I need to listen to the tape again.

9 BY THE COURT: Okay, well, here is what I'm
10 going to do then. You go, over the lunch hour -
11 y'all are going to get to eat again - you need to
12 listen, you need to listen to the tape. If he is
13 going to testify to things other than what is in
14 the tape, then you must tell him what they are, and
15 I will cross that bridge when I find out if there
16 is. If he is going to testify to the same things
17 that they furnished you, that are in the things
18 that have been furnished to you, then I'm going to
19 allow him to testify.

20 BY MR. HORAN: Also, Your Honor--

21 BY THE COURT: --I'm going to allow him to
22 testify on those things anyhow. It's a question as
23 to whether any new material as to what--

24 BY MR. HORAN: --Yes, sir, and that would
25 include any documentations that they discovered to
26 us that they were aware of?

27 BY THE COURT: Right. Yeah.

28 BY MR. HORAN: Okay.

29 BY MR. LUMUMBA: We have already supplied them

1 with an exhibit. In fact, I'm not sure they didn't
2 give it to us.

3 BY MR. HORAN: That's correct.

4 BY THE COURT: Well, whatever everybody has
5 had I'm going to let him testify to. If you
6 haven't got it, then we are going to cross that
7 bridge. Okay? Now did y'all have another matter?

8 (State's Counsel confer.)

9 BY THE COURT: No, don't wait. Let's get it
10 out of the way so we can do witnesses.

11 BY MR. HORAN: Yes, sir. As the Court is well
12 aware, that the Court appointed an independent
13 firearms examiner by the name of David Balash. I
14 interviewed Mr. Balash last night regarding the
15 substance of his report, and I'm really not that
16 concerned about other things that aren't in the
17 report other than the fact that I anticipate and he
18 tells me that they interviewed him with reference
19 to gunshot residue. And I asked him was he an
20 expert in the field of gunshot residue kits, as to
21 things like that, and he said he was not. He said
22 they extensively interviewed him regarding those
23 matters.

24 BY THE COURT: Well, he is an expert, and he
25 can give his opinion in the field that he is an
26 expert in. Other than that, he is not entitled to
27 give an opinion. Now I don't know how y'all are
28 going to qualify him. You may qualify him as an
29 expert, and if you do, fine. But he can't give his

1 opinions unless he is qualified.

2 BY MR. LUMUMBA: Okay. Judge, one other thing
3 on that. I am glad that he raised that. I am
4 raising it right now. It's a real short motion, a
5 Motion to Exclude his testimony. And the basis
6 that I raise this Motion to Exclude his testimony
7 is if the Court recalls, we sought Mr. Balash as an
8 expert and we applied to the Court for funds to get
9 him as an expert. He was appointed as an expert
10 and I thought for the defense. The Court later
11 told me he was appointed for the Court.

12 The problem that we have, Judge, is this. The
13 discovery rules clearly say that we are only
14 required to give them things if our constitutional
15 rights are not infringed upon. In other words,
16 anything which constitutionally the Defendant has a
17 right to hang upon and not to disclose, then it
18 shouldn't be disclosed. In this case, for
19 instance, Mr. Balash has come in with a report
20 which we would argue actually made, that the
21 prosecution tends to use to incriminate the
22 Defendant in the death of Mr. Stewart and others.
23 You know, I think that they had evidence at the
24 prior trial really which only focused in upon one
25 individual, and I think that was Ms. Tardy. I
26 can't, I think that was Ms. Tardy. But this expert
27 has come in and says things that the expert who
28 just testified didn't say, okay, about the other
29 bullets and the matching.

1 Under the rules of discovery, we are not
2 required to give that up if we discover that, and
3 the Court ordered Mr. Balash to give him and the,
4 give him and the prosecutor the evidence of his
5 report, and he sent it to them pursuant to the
6 Court's order. So therefore, I think that is a
7 violation of the discovery rule and a violation of
8 our right not to be involved in incriminating
9 ourselves or hiring people who do.

10 So for that reason, I think that Mr. Balash--
11 and for reasons I presented in the past about, you
12 know, that the Defendant was indigent with respect
13 to being able to afford him and shouldn't be put in
14 a position where we are at any more of a
15 disadvantage than anybody else, I think his
16 testimony should be precluded.

17 **BY THE COURT:** Okay. Of course, y'all didn't
18 hire him. He is Court appointed. He was appointed
19 at your request, and the Court allowed you to make
20 the selection. Other than that, he is appointed
21 pursuant to Rule 706, and 706 clearly provides
22 that both sides are entitled to his findings. So
23 that Motion is overruled. Anything else before
24 lunch?

25 **BY MR. EVANS:** No, sir.

26 **BY THE COURT:** Okay, I will see y'all at
27 1:00.

28 (FOLLOWING THE NOON RECESS ON FRIDAY, MARCH
29 26, 1999, THE TRIAL CONTINUED IN OPEN COURT WITH

1 THE COURT, ALL COUNSEL EXCEPT MR. FREELON, THE
2 DEFENDANT AND THE JURY ALL PRESENT:)

3 (BEFORE THE PROCEEDINGS STARTED BACK, AN
4 INVOICE FROM WEED BROTHERS DATED 7/16/96 WAS MARKED
5 AS STATE'S EXHIBIT S-105 FOR IDENTIFICATION.)

6 BY THE COURT: Who do you have next?

7 BY MR. HORAN: David Balash.

8 BY THE COURT: Mr. Balash, if you would raise
9 your right hand.

10 DAVID BALASH,

11 a white male called to testify as a witness by the State of
12 Mississippi, having first been duly sworn, testified as
13 follows, to-wit:

14 BY THE COURT: Have a seat right there,
15 please, sir.

16 BY THE WITNESS: Thank you, sir.

17 BY THE COURT: State your name for the record.

18 BY THE WITNESS: David E. Balash.

19 (Mr. Evans leaves the courtroom.)

20 DIRECT EXAMINATION BY MR. HORAN:

21 Q. Mr. Balash, where do you live?

22 A. Canton, Michigan.

23 Q. And what do you do in Canton, Michigan?

24 A. Currently I am self-employed as an independent
25 firearms examiner, forensic science consultant.

26 Q. What qualifies you to be a firearms examiner, Mr.
27 Balash?

28 A. The main qualifications that I possess as a
29 firearms examiner stem from my 25 and a half years of work

1 with the Michigan State Police, twenty and a half of those
2 years assigned to the forensic science division working in
3 the firearms identification, tool mark, bombs, and explosives
4 unit.

5 BY MR. HORAN: Your Honor, at this time Mr.
6 Balash, as the Court well knows, is a court
7 appointed expert, and I would tender him as an
8 expert in the field of firearms examination.

9 BY MR. LUMUMBA: I have no objection to Mr.
10 Balash's qualifications, Judge.

11 BY THE COURT: I accept him as an expert in
12 that field.

13 BY MR. HORAN:

14 Q. Mr. Balash, did certain exhibits come into your
15 possession, I believe here in Mississippi, in order that you
16 could conduct some examinations on them within your
17 expertise?

18 A. Yes, sir. They did.

19 Q. I want to hand you -- okay, and after you conducted
20 these examinations, did you compile a report?

21 A. Yes, sir. I did.

22 Q. And does that report reflect what your findings
23 were and what your conclusions were?

24 A. Yes, sir; it does.

25 BY MR. HORAN: Just a minute. Court will
26 indulge me just one minute.

27 Q. I want to hand you State's Exhibit number 89, I
28 believe it is, if I can find it. Can you tell me whether or
29 not this particular exhibit was one of the items that you

1 examined?

2 A. (Pause while witness looks at exhibit.) May I
3 refer to my report, sir?

4 Q. Sure. (Pause) Okay, excuse me. I believe it is
5 number 88 is the one I want to ask you about first.

6 BY MR. HORAN: If the Court will indulge me
7 just a minute, Judge. The reports correspond
8 different numbers. I need to check that.

9 Q. I believe State's Exhibit number 88, did you
10 examine that particular exhibit. It's on your list right
11 here, S-88.

12 A. Yes, sir. I did.

13 Q. And that is identified as a fragment that was
14 recovered from the victim of Carmen Rigby, is it not, on that
15 tubing on the inside? You have got it on your report --
16 identified right there, Carmen Rigby.

17 A. Yes, sir. It does.

18 Q. And did you also examine State's Exhibit number 75
19 at this time?

20 A. Yes, sir. I did as well.

21 Q. And I will hand you State's Exhibit number 87,
22 State's Exhibit number 81, 82, 83, and 84.

23 (Mr. Evans enters the courtroom.)

24 Q. I will have you testify, if you would, whether or
25 not you did, in fact, examine those particular exhibits?

26 A. (Pause while witness examines exhibits.) With a
27 slight explanation, I can identify these, sir.

28 Q. Yes, sir. Okay, and what would that explanation
29 be?

1 A. The explanation is that on the report that I
2 generated they were carried under different numbers, and
3 those numbers that I carried them under appear either to be
4 concealed by the current numbers that I can't see. With that
5 as a given that the numbers correspond now to the numbers
6 that have been altered or put into my report, then I do say
7 that I have seen all of these items of evidence, sir.

8 Q. Thank you, sir. I hand you now 75-- I mean, excuse
9 me, 76. I'm sorry. And State's Exhibit number, I believe
10 this is-- yes, sir, 89. Again, with that same, I understand
11 that those have different numbers on them now than they did
12 when you examined them, but assuming that to be a fact, and
13 you have noted that your report has been modified to reflect
14 that, did you, in fact, also examine those two exhibits?

15 A. Yes, sir. I did and these two exhibits also
16 display the number that I wrote on the outside of the
17 envelopes and my initials.

18 Q. Okay. All right. Now the exhibit identified that
19 is in your possession now is State's Exhibit number 75. Did
20 you do a comparison of that particular exhibit to the
21 projectile in 76 and 89 as well as other exhibits there in
22 your possession?

23 A. Yes, sir. I did.

24 Q. Okay, for what purpose? What was the purpose of
25 your examination, Mr. Balash?

26 A. The purpose of my examination was to compare the
27 various fragments and portions of bullets, fired bullets, and
28 ascertain if I could, whether they all had a common origin or
29 were they fired from the same weapon as well as the fired

1 cartridge cases that were received.

2 Q. I hand you State's Exhibits number 78 and 77 as
3 well as State's Exhibits number 79 and 85. Does your report
4 reflect that you did likewise an examination on these
5 particular exhibits?

6 A. With the same proviso, yes, sir.

7 Q. Yes, sir, with the same proviso you have testified
8 to about earlier. I understand that. I want you to draw
9 your attention, if you would, please, sir, to the Exhibit
10 number 75. What does that box contain?

11 A. State's Exhibit S-75 is a white pill box, and
12 according to my information would contain one fired bullet.
13 And I also noted on my report that this was recovered at the
14 mattress at the Tardy Furniture is where the information that
15 I have as to where this bullet came from.

16 Q. Okay.

17 BY MR. LUMUMBA: Judge, I would object, but I
18 will ask the Court to hold that objection pending
19 whether or not it is connected later on and
20 admitted; okay?

21 BY MR. HORAN: Thank you.

22 BY MR. HORAN:

23 Q. Now State's Exhibit number 76, what does that
24 particular box contain?

25 A. State's Exhibit 76 is a manila coin envelope, and
26 it indicates one spent projectile. And according to my
27 report, it contains one fired bullet.

28 Q. And does your report contain information where that
29 was obtained from?

1 A. Yes, sir. It does.

2 Q. What does it say on your--

3 A. --It says Doyle's house.

4 Q. Okay, and State's Exhibit number 89, likewise would
5 you give the description of the evidence in that particular
6 box and anything, any report that identifies where that was
7 retrieved from?

8 A. State's Exhibit 89 is a white envelope, and
9 according to my report, it contains one fired bullet.

10 Q. Do you have on your report where it came from?

11 A. Yes, sir. I do.

12 Q. Where would that be?

13 A. I have got indicated Doyle's house.

14 Q. I want to draw your attention to State's Exhibit
15 number S-88. Did you look at that particular exhibit?

16 A. I have.

17 Q. Okay, and does it indicate on your report the
18 description of that particular evidence and where it was
19 obtained from?

20 A. According to my report, it's a fired bullet
21 fragment, and it came from the victim, Carmen Rigby.

22 Q. State's Exhibit number 80-- excuse me; strike that,
23 77 through State's Exhibit number 85, would you describe or
24 explain to the jury what your report reflects that the
25 description of that particular evidence is and where it was
26 obtained?

27 A. 77 through 85, sir?

28 Q. 77-- strike that. 77, 78, 79, 80, 81, 82, 83, 84
29 and 85, yes, sir.

1 A. Okay, State's Exhibit 77, according to my report,
2 indicates one fired bullet, Tardy Furniture Store. All of
3 these next items are listed on my report as coming from the
4 Tardy Furniture Store. S-78 is a fired bullet. S-79 is a
5 fired bullet fragment. S-80 is a .380 auto caliber CCI
6 Industries fired cartridge case. S-81 is a .380 auto
7 caliber Remington Peters fired cartridge case. S-82 is
8 a .380 auto caliber CCI fired cartridge case. S-83 a .380
9 auto caliber CCI fired cartridge case. S-84 is a .380 auto
10 Winchester fired cartridge case. And S-85 a .380 auto CCI
11 cartridge.

12 Q. With relationship to the projectile or the bullet
13 that you testified about that came from the mattress at Tardy
14 Furniture Store, in relationship to the bullet from
15 S-80--strike that, 76 that came from Doyle's house in your
16 report, and S-89, the projectile that came from Doyle's house
17 in your report, as well as the Exhibit number S-88 that has
18 been identified as coming from the head of Carmen Rigby;
19 based on your training, your experience and the tests that
20 you ran on those items, did you come to a conclusion as to
21 whether or not those particular items were fired from the
22 same weapon?

23 A. Yes, sir. I did.

24 Q. What is the basis of that particular conclusion or
25 opinion?

26 A. The basis of the opinion is to take the individual
27 fired bullets, and by utilizing a comparison microscope,
28 compare the, first of all, you would compare the land and
29 groove impressions. The land and groove impressions would

1 have to agree before the next step. The next step is to
2 compare the fine microscopic markings that are contained
3 within the land and groove impressions, and those can be
4 unique to each firearm. Therefore, if I can find enough
5 marks to positively state that it was or was not fired in a
6 weapon, that is a statement that I will go ahead and make.

7 Q. Okay, did you come to that conclusion as to-- and I
8 will add one more exhibit. Exhibit number S-78, I believe.
9 Did you come to a conclusion based on your experience that
10 those, those particular exhibits were all fired from the same
11 weapon?

12 A. I did. I came to the conclusion that all of those
13 fired bullets had passed down the same barrel.

14 Q. Now did you know Steve Byrd prior to getting
15 involved in this particular case?

16 A. No, sir. I did not.

17 Q. Now are you familiar with Mr. Byrd's findings as to
18 his examination of these particular exhibits?

19 A. That is correct. I read his reports prior to my
20 examinations.

21 Q. Was Mr. Byrd's report either right or wrong?
22 Anything wrong with his particular report?

23 A. Wrong, no, sir; there is not.

24 Q. What type of projectiles-- strike that. Would
25 projectiles that you examined, would they be consistent with
26 having been fired from a .380 semi-automatic revolver-- I
27 mean pistol?

28 A. Yes, sir. They would.

29 Q. As to State's Exhibits S-80, S-81, S-82, S-83, and

1 S-84 that has been identified as the cartridges in the
2 description of evidence, I believe; is that correct?

3 A. Those are all identified as fired .380 auto caliber
4 fired cartridge cases.

5 Q. Cases, I'm sorry. I'm sorry. Are they consistent
6 with having been fired out of the same weapon?

7 A. I have identified them as having been fired in the
8 same weapon.

9 Q. In the same weapon?

10 A. That is correct, sir.

11 Q. What is the basis of your opinion, Mr. Balash, that
12 the projectiles that you have identified as coming out of the
13 mattress and of the head of Carmen Rigby and from Tardy
14 Furniture Store and the two that came from Doyle's house,
15 what is the basis? How did you come to that conclusion?
16 What tests did you run in order to come to that particular
17 conclusion?

18 A. The tests that I ran essentially was looking at the
19 fired bullets and bullet fragments under a comparison
20 microscope. And my process in this particular case was take
21 the first bullet, which was the one out of the mattress that
22 was submitted to me, and establish that as my test or a known
23 standard. Then I compared the first of the two bullets that
24 were recovered and listed as those coming from Doyle's house,
25 and I identified both of those bullets against the one
26 recovered from the mattress which meant in my opinion, all of
27 those bullets came from the same firearm. I then looked at
28 all the other fragments and partial fragments and again,
29 utilizing now one of those bullets as my test, I compared it

1 to the other fragments. And in the case where the bullet
2 fragment which is indicated as item S-88 from the victim
3 Carmen Rigby, I used at least two and probably all three of
4 the other bullets to form an opinion that that had also been
5 fired from the same weapon that those three had been fired
6 from. And this was all done by utilizing the comparison
7 microscope.

8 Q. And how long have you been conducting these type of
9 examinations, Mr. Balash?

10 A. It has been about 27 and a half years, sir.

11 Q. Now Mr. Balash, you were, basically got involved in
12 this case as a result of the entrance of a court order; is
13 that right, court appointed basically?

14 A. That was not my understanding. I was contacted by
15 an attorney and asked if I would look at the case, sir.

16 Q. But as far as your compensation and things like
17 that, it is pursuant to a court order; is that correct?

18 A. It is my understanding that is correct, sir.

19 Q. Are you charging substantially less on this case
20 than what you usually charge?

21 A. Yes, sir. I am.

22 Q. What is your normal rate requested?

23 A. My normal rates of compensation, sir?

24 Q. Yes, sir.

25 A. I normally charge \$225.00 an hour for court time
26 testimony or deposition testimony. I charge \$150.00 an hour
27 to examine or review case material, and I charge \$100.00 an
28 hour just to travel to and from whatever location I am at.
29 If it's a flight involved, then I would charge a fee of about

1 two hours at court time plus whatever the airline tickets
2 would run.

3 Q. And what was your requested rate of compensation on
4 this particular case?

5 A. My requested rate?

6 Q. Right.

7 A. I had indicated when contacted initially that
8 understanding it was a court appointed case, that I would
9 appear for a total compensation of \$500.00 per day plus
10 whatever expenses I had incurred, actual expenses, which
11 would be, it was my understanding it was \$30.00 or \$32.00 for
12 meals per day from the State of Mississippi and whatever they
13 would pay for the plane fare and parking fees, etc.

14 Q. If you would, hand me those exhibits back, please,
15 Mr. Balash. I want to-- we have identified the exhibits, and
16 I want to draw your attention to State's Exhibit number 75.
17 It is identified as coming from a mattress at Tardy Furniture
18 Store. Do you remember actually doing a, visually examining
19 that particular exhibit? Do you remember?

20 A. Yes, sir. I do.

21 Q. Would you tell the jury and the Court whether or
22 not upon your visual examination and maybe even your
23 microscopic examination of that particular exhibit, whether
24 or not there were indications on that particular projectile
25 that would be consistent with that projectile having been
26 manipulated as a result of striking something or ricocheting
27 off of something?

28 A. According to my report as I have listed it in the
29 case, I listed it as evidence, under evidence received, one

1 white pill box containing S-75 in this case, and I described
2 it as one .380 auto caliber full metal jacketed fired
3 bullet. And after that, I had the notation, "This bullet
4 displays ricochet damage to its base."

5 Q. And that likewise is based on your experience and
6 training over the past 25 years of examining projectiles and
7 bullets; is that correct?

8 A. That is correct, sir.

9 Q. Thank you. I want to show you State's Exhibit
10 number S-38. It's a photograph. Would you look at that
11 photograph, please.

12 A. (Witness looks at photograph.)

13 Q. Have you had the chance to look at it?

14 A. Yes, sir. I have.

15 Q. You note in the upper right hand, on the right
16 side, not the upper, on the right side of the photograph it
17 appears to be a mattress. I want you to assume a couple of
18 things, please, sir, as being facts; okay?

19 A. Certainly.

20 Q. Okay, if you could assume that there was a
21 projectile recovered from that particular mattress in close
22 proximity to the post that contained that marking and that
23 particular exhibit was, in fact, State's Exhibit number 75
24 that you identified as coming from a mattress in Tardy
25 Furniture Store. Would that marking or that disfigurement of
26 that post be consistent with a bullet, the findings that you
27 have testified to about the evidence of ricocheting, would
28 that be consistent with the markings that you see on that
29 particular post?

1 A. The markings that I see on People's proposed
2 exhibit or Exhibit S-38 is a photograph that I have seen
3 prior, and I have examined it under an amount of
4 magnification. There is a mark in the center area of the
5 photograph which appears to be a white painted brick or a
6 light colored painted red brick, and there was damage to the
7 center of that brick. It could have been caused by a fired
8 bullet; yes, sir.

9 Q. It could be consistent with that?

10 A. It could be. I don't know if I would use the term
11 consistent with, but it could have come from that source.

12 Q. Could have resulted from that?

13 A. That is correct, sir.

14 Q. Thank you.

15 (State's Counsel confer briefly.)

16 BY MR. HORAN: No further questions.

17 BY MR. LUMUMBA: May I proceed, Your Honor?

18 BY THE COURT: Yes, sir.

19 CROSS-EXAMINATION BY MR. LUMUMBA:

20 Q. Good afternoon, Mr. Balash?

21 A. Good afternoon, Mr. Lumumba.

22 Q. And just a few questions. First of all, and I
23 think this is probably quite clear. There is nothing in your
24 examination that would in any way indicate that Mr. Flowers
25 had anything to do with this. Isn't that true?

26 A. No, I have no personal knowledge of where the items
27 came from nor who was involved with it. That is correct,
28 sir.

29 Q. Okay, and the-- what I want to ask you a couple of

1 questions about. In your expertise, I know you are not-- you
2 don't analyze trace evidence, do you?

3 A. That is correct. I do not analyze it.

4 Q. Okay, and in terms of analyzing it and breaking it
5 down, that is not your field?

6 A. That is correct, sir.

7 Q. Okay, but in the field that you are involved in,
8 does your expertise encompass knowledge with respect to the
9 deposits of gunshot residue and things of that nature?

10 A. Yes, they do.

11 Q. Okay, kind of to the best of your ability, tell me
12 how your expertise, what in that area your expertise does
13 cover. What can you tell me about it? Tell the ladies and
14 gentlemen?

15 A. There is a great number of things in firearms
16 discharge residue that comes into play for a firearms
17 examiner. The most normal course of action is when an
18 individual has been shot in close range, the clothing is
19 examined to find bullet holes of entry versus bullet holes of
20 exit. If there is gunpowder sitting, deposited on the
21 clothing, then the firearms examiner, if he has the weapon
22 and the type of ammunition, would be able to formulate an
23 opinion as to the distance that the muzzle was from the
24 victim or the garment at the point in time that the muzzle
25 discharged. The other items that you would look at as the
26 comparison to the chemical tested you would take to determine
27 whether they were nitrates or nitrites or gunpowder on
28 particular garments and/or skin.

29 I have also looked at many autopsies for

1 indications of contact or near contact or close range
2 shooting, measured those and made comparisons, and also
3 collected samples for neutron activation analysis or atomic
4 absorption to determine whether or not the chemicals
5 contained within the priming compound of center fired
6 cartridges, which are barium and antimony, are present which
7 would be indicative process that an individual has had
8 possession of or fired a gun.

9 Q. Okay, and in the last thing you said about it would
10 be indicative that that individual had fired a gun or had
11 possession of a gun; is that true?

12 A. Right. To the best of my knowledge, there is no
13 test at the current time that absolutely establishes that an
14 individual has fired a gun. The test that I am referring to
15 is now normally being conducted by utilizing a scanning
16 electron microscope, and they are looking for specific
17 articles in the gunpowder residue, which is the barium,
18 antimony combination formed when the gun discharges under
19 pressure and heat. And when they find that, they can say
20 that that is unique to firing of a weapon.

21 But you can get those from a number of different
22 ways. It doesn't mean you have to be the one firing a
23 weapon. It means you can be near a weapon when it was
24 fired. It depends on where you find it obviously. It could
25 mean you could have handled a weapon that had been fired. It
26 could have been transferred to you from a contaminated
27 surface of some sort, or you could have fired a weapon to get
28 that deposited on your hands. Those are the ways I interpret
29 that.

1 Q. Could, in fact, when a weapon is fired and it's not
2 clean, is gunshot residue usually left on the weapon itself?

3 A. Most always; yes, sir.

4 Q. Okay, and for instance, if-- and when you talk
5 about gunshot residue, there is no test that you are aware of
6 that can tell you whether this residue was caused by a pistol
7 as opposed to a rifle, is it?

8 A. The residue itself, sir?

9 Q. Yes.

10 A. No. It's the forming-- in the compositions where
11 the test that utilizes the scanning electron microscope, it's
12 the composition of the primer itself. So it doesn't really
13 have anything to do with the gunpowder that is contained
14 within it. It's the primer compositions, and the amount of
15 primer compositions are normally very consistent even in
16 pistol and rifle primers.

17 Q. So and basically, so if I followed your testimony
18 correctly, a person could have a speck of residue either from
19 having come in contact with a weapon; is that correct?

20 A. That is correct, sir.

21 Q. They could have it from having come in contact with
22 something else that had residue on it that came from a
23 weapon; is that correct?

24 A. Correct.

25 Q. And you might have a surface, some kind of object
26 possibly could collect some residue; is that correct?

27 A. That is correct, sir.

28 Q. A person can shake hands with an individual, and
29 that might transfer some residue; is that correct?

1 A. If the person that was shaking hands, one of them
2 had gunpowder residue on their hand, that would be correct,
3 sir.

4 Q. Right. And you could even actually be in the
5 atmosphere where residue has been-- you know, frequently
6 people go do target practice or go hunting or things of that
7 nature, and a number of them are together. You can actually
8 collect residue from being present when somebody is firing a
9 gun; is that correct?

10 A. Absolutely.

11 Q. Now so it literally would be impossible to say how
12 many people at any given point in time at any given place
13 might be walking around with residue on their hands?

14 A. I wouldn't have a way to answer that, sir; I'm
15 sorry.

16 Q. Let me finally ask you this. Now we are going to
17 strike that, but you-- how is the weather in Michigan?

18 A. It's getting better, sir.

19 Q. Getting better, okay, and we know each other from
20 long back; right?

21 A. I know you, you have remembered me from somewhere,
22 and I didn't recall you initially. That is correct, but
23 apparently you did work in the Detroit area is where you
24 understood me to be working. That is correct, sir.

25 BY MR. LUMUMBA: Okay. I have no further
26 questions at this time.

27 BY THE WITNESS: Thank you, sir.

28 REDIRECT EXAMINATION BY MR. HORAN:

29 Q. I want to ask you something, Mr. Balash. Counsel

1 for the Defendant made reference to atmosphere, gunshot
2 residue being in the atmosphere. Does it just float around
3 like dust?

4 A. You would have to define what atmosphere you are
5 speaking of, sir.

6 Q. Well, like in this room right now, if I stood right
7 here and say I could contain the-- just right now in the last
8 four hours or five hours, and you took some of this air and
9 went and analyzed it, would gunshot residue be necessarily in
10 that particular air right there?

11 A. I would hope it would not be, sir.

12 Q. Is it possible for that to happen?

13 A. Unless there has been a gun discharged in this
14 building within, you know, several hours to have it still
15 suspended in the atmosphere, I don't see how it could be in
16 the air.

17 Q. Okay. Now I want you to assume a couple of things
18 for me if you would. Assume for the basis, for the purpose
19 of your testimony that someone did, in fact, fire a weapon.
20 If you would, please assume that.

21 A. Okay.

22 Q. What factors - and I want to clear this up - what
23 factors can affect whether or not a gunshot residue kit would
24 produce positive results on the hand of that individual?

25 A. Well, the most critical item to begin with is that
26 the gun being fired have the components antimony and barium
27 in the primer composition. A number of .22's, for example,
28 do not have that. So therefore, that test would not work on
29 some .22 caliber cartridges. Now center fire rifle or pistol

1 cartridges, one when you look at the base and it has a little
2 silver or brass dot in the middle of it, that's the one that
3 has a center fire is what they are referred to. Those all
4 have barium and antimony compositions in those priming
5 mixtures.

6 Now once you fire one of those type of weapons, if
7 you have a pistol, and every handgun is a pistol except that
8 revolvers are somewhat different because of the fact that
9 they have a moving cylinder. So everything that is not a
10 revolver is a pistol. So you can have a single shot. You
11 can have a derringer; you can have a semi-automatic. All of
12 these are pistols. Each of those pistols have closed
13 chambers. In other words, when you put a cartridge in that
14 weapon and get ready to fire it, there is very little exposed
15 area back towards the shooter. Most of the majority of the
16 energy is going to be out of the muzzle depending on the
17 muzzle length of firearm. When the gas cloud comes out, it
18 will be very difficult to get a great deal of that backwards
19 on the shooter.

20 In a revolver there are three different areas where
21 gunpowder gases escape at. A great number of them escape
22 from the muzzle, but because of the fact that it's a cylinder
23 and rotates, there is an open space there. And these
24 cartridges are under tremendous pressure. When you see them,
25 they vent sideways from the gun. And so revolvers
26 historically have always deposited greater, more substantial
27 gunpowder residue on the hands of the shooter or the people
28 in and around them than do either single shot, derringer, or
29 semi-automatic pistols because those are all contained

1 areas.

2 Now in those, the derringer and the single shot,
3 there is no moving parts. In the semi-automatic pistol,
4 however, on each pull of the trigger and the cartridge case
5 that is in the chamber is fired, the bullet exits. The
6 majority of the gas exits the muzzle of the firearm. The
7 action is actuated by the pressure, and it moves the slide
8 back and extracts and ejects the fired cartridge case. At
9 that point it opens up the chamber area, and the residual
10 gases now can be in this area in and around. So a revolver
11 will deposit the most by far on a percentage basis.
12 Semi-automatics the next, and less for the derringers and
13 single shots.

14 Q. Okay. Would it be unusual based on your apparent
15 knowledge regarding gunshot residue kits, for an examination
16 or a kit to have been drawn off of someone who had fired a
17 weapon and there not be any gunshot residue kit on the palm
18 of the hand considering the fact that the type of weapon used
19 in this particular instance was, in fact, a semi-automatic
20 pistol?

21 A. I don't think I followed the first part of your
22 question; I apologize.

23 Q. Okay, assuming that, would it be unusual
24 considering the fact that we have a semi-automatic pistol
25 involved in this particular instance. That's what your
26 expert findings were; is that right?

27 A. It's, a .380 auto is almost consistent entirely
28 with a semi-automatic pistol; that is correct, sir.

29 Q. And based on your testimony a few moments ago, you

1 would expect under normal circumstances that the gunshot
2 residue, if found, would be on the back of the hand?

3 A. The back of the web. If it's available to be
4 found; that is correct, sir.

5 BY MR. HORAN: Nothing further.

6 BY THE COURT: You say you are through?

7 BY MR. HORAN: I am through.

8 BY THE COURT: Is he finally excused?

9 BY MR. HORAN: Yes, sir. I do need to talk to
10 Mr. Balash. I don't believe he is leaving right
11 now, but I need to talk with him before he leaves
12 about his arrangements. He is excused as a
13 witness.

14 BY THE COURT: Okay, thank you, Mr. Balash.
15 You can step down.

16 BY THE WITNESS: Excuse me, Your Honor. I
17 thought Mr. Lumumba was going to say something.
18 I'm sorry, Your Honor.

19 BY THE COURT: He may see you later too.

20 WITNESS WAS EXCUSED BUT WAS LATER RECALLED BY THE
21 DEFENDANT.

22 BY THE COURT: Who do you have next?

23 BY MR. EVANS: Joe Andrews.

24 (Mr. Horan left the courtroom. Witness
25 enters.)

26 BY THE COURT: You have not been sworn, have
27 you?

28 BY THE WITNESS: No, sir.

29 BY THE COURT: Raise your right hand.

1 **JOE EDWARD ANDREWS, JR.,**
2 a white male, called to testify as a witness by the State of
3 Mississippi, having first been duly sworn, testified as
4 follows, to-wit:

5 **BY THE COURT:** Mr. Andrews, have a seat right
6 there.

7 **BY MR. EVANS:** May I proceed?

8 **BY THE COURT:** Yes.

9 DIRECT EXAMINATION BY MR. EVANS:

10 Q. State your name for the record, please.

11 A. Joe Edward Andrews, Jr.

12 Q. Mr. Andrews, how are you employed?

13 A. I am employed at the Mississippi Crime Laboratory
14 in Jackson.

15 Q. And in what capacity are you employed at the Crime
16 Lab?

17 A. I am employed in the microanalysis section,
18 microanalysis being the section that is responsible for the
19 analysis of what is commonly called trace evidence. In our
20 laboratory that includes the analysis of such things as
21 hairs, textile fibers, paints, glass, gunshot residue, and
22 footwear and tire track impressions.

23 Q. And what type of training and experience do you
24 have that allows you to perform these duties?

25 A. I have a Bachelor of Science degree from the
26 University of Mississippi in forensic science. I have also
27 received training at the Mississippi Crime Laboratory in all
28 aspects of microanalysis. I have attended numerous seminars
29 put on by the Federal Bureau of Investigation on the

1 examinations of various types of trace evidence, and I have
2 attended numerous seminars around the country that dealt with
3 those specific topics.

4 Q. Have you had the occasion to testify and be
5 accepted in the courts in the State of Mississippi as an
6 expert in the field of my microanalysis?

7 A. Yes, sir. I have.

8 Q. Approximately how many times?

9 A. Approximately 250.

10 BY MR. EVANS: Your Honor, I would offer him
11 as an expert in the field of microanalysis.

12 BY MR. LUMUMBA: I have no objection to his
13 expertise, and I would--

14 BY THE COURT: The Court will accept him--

15 BY MR. LUMUMBA: Okay, can we approach for a
16 minute?

17 BY THE COURT: Sure. First let me make, show
18 clear on the record. The Court is going to accept
19 him as an expert in that field. All right.

20 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
21 THE JURY AS FOLLOWS:)

22 BY MR. LUMUMBA: Okay, I'm going to make an
23 objection now to his testimony concerning anything
24 concerning the foot impression. That objection is
25 based upon the fact that that basic analysis that
26 he did is based upon hearsay. Now this is what I'm
27 saying. If we notice the exhibit, what they did is
28 they purchased, the police purchased some shoes
29 from the store. But those shoes were not the same

1 model of Grant Hill shoes. One is called Grant
2 Hill Olympic, and I think that they purchased Grant
3 Hill Olympic. The box that was in Mr. or in
4 Connie's house was Grant Hill II. Now one or the
5 other; I can't remember. What he did is he
6 compared the Olympic, and based upon what I believe
7 to be hearsay information, he concluded that the
8 Olympic has the same out sole pattern, in other
9 words, the same bottom, all right, as the Grant
10 Hill II. But he doesn't know that of his personal
11 knowledge. He only--

12 **BY THE COURT:** --But he is an expert. He
13 doesn't have to know of his own personal
14 knowledge. They are entitled to use hearsay to
15 form their opinion, and you are entitled to make
16 that point with him when you cross-examine him, but
17 I think it is a question of fact for the jury to
18 determine.

19 **BY MR. LUMUMBA:** Okay, I just wanted to make
20 that objection.

21 **BY THE COURT:** Okay.

22 **END BENCH CONFERENCE.**

23 **BY MR. EVANS:** May I proceed, Your Honor?

24 **BY THE COURT:** Yes.

25 **CONTINUED DIRECT EXAMINATION BY MR. EVANS:**

26 Q. Mr. Andrews, in this particular case were you
27 called upon by investigators to make different comparisons?

28 A. Yes, sir. I was.

29 Q. Did one of those comparisons have something to do

1 with some bloody shoe tracks that were presented to you?

2 A. Yes, sir.

3 Q. I want to-- let's see. I want to hand you Exhibits
4 93, 94, 95 and 96, and I will ask you to look at those if you
5 would.

6 A. (Pause while witness looks at exhibits.)

7 Q. Have you had a chance to look at them?

8 A. Yes, sir.

9 Q. Have you seen those exhibits before?

10 A. Yes, sir; I have. I can recognize them. Each one
11 of the photographs bears the Mississippi Crime Laboratory
12 case number, the exhibit number, and my initials on the
13 corner of the photograph.

14 Q. And were you produced copies of those photographs
15 and asked to make any type of determination?

16 A. Yes, sir. I was.

17 Q. What were you asked to determine?

18 A. Initially I was asked to examine the photographs to
19 determine if there was indeed a footwear impression present
20 in the photograph. You can look at each one of the
21 photographs and see that there is a design characteristic
22 visible in the photograph, and that design characteristic was
23 consistent with what you see in normal footwear impressions.

24 Q. After you determined that this was a footwear
25 impression, what next did you do?

26 A. Initially at the time that the photographs were
27 submitted to the laboratory, there was a pair of shoes that
28 were submitted from a suspect in the case, and I was asked to
29 compare these impressions against the out sole design on that

1 pair of shoes.

2 Q. All right, and that pair of shoes, I believe you
3 were informed, was a pair of shoes that the Defendant had on
4 at the time that he was questioned; is that correct?

5 A. Yes, sir. That was the way they were submitted to
6 the laboratory.

7 Q. What size shoes were those?

8 A. That was a pair of Nike Flight tennis-- athletic
9 shoes, and they were size ten and a half.

10 Q. Okay. After you determined that that was not the
11 correct shoes, what steps did you make to try to determine
12 what type of shoe left this impression?

13 A. During the course of the examination, our
14 laboratory does not have a shoe print out sole file. There
15 are such files that exist, but our particular laboratory
16 doesn't have that file at this time. But the design that you
17 can see in the photographs was looked at, and we went to
18 several different athletic stores and basically saw a design
19 that was very similar to this design on a pair of shoes at an
20 athletic store.

21 Q. And what type of shoe was that?

22 A. That was a pair of Fila athletic shoes.

23 Q. All right, next before I actually get into this, I
24 want to show you Exhibit 61 and ask you if you have had an
25 occasion to see this box before?

26 A. Yes, sir. I have.

27 Q. And under what condition was that box submitted to
28 you?

29 A. It was submitted to the Crime Laboratory for the

1 examination for latent prints, but it was-- I examined it for
2 information present on the end of the box that would indicate
3 what style and size of shoe was originally packaged in the
4 box.

5 (NOTE: Mr. Horan enters courtroom.)

6 Q. And what size, style and size shoe was originally
7 packaged in that box?

8 A. According to the information on the end of the box,
9 the shoes that were originally packaged in this box were a
10 pair of Fila Grant Hill II MID shoes, size ten and a half.

11 Q. Okay. Based upon your being furnished this box
12 and having that information, did you make any request of
13 anyone?

14 A. In speaking to the Highway Patrol investigators
15 that were working on this case, in particular H. W. Miller,
16 we-- I conveyed the information to him that the pair of shoes
17 that were originally in this box were a pair of Grant Hill
18 Fila tennis shoes and that he might want to try to purchase a
19 pair of shoes of like size to be compared to the impressions
20 from the scene to see if the impressions from the scene were
21 consistent in design with that particular type of shoe.

22 Q. And did Investigator Miller do that?

23 A. Yes, sir. He did.

24 Q. I will next hand you State's Exhibit number 90 and
25 ask you to compare this box of shoes if you would?

26 A. (Pause while witness looks at exhibit.)

27 Q. Have you had a chance to?

28 A. Yes, sir.

29 Q. Have you seen that box of shoes before?

1 A. Yes, sir. I have.

2 Q. And under what condition did you see that box of
3 shoes?

4 A. This was a pair of shoes submitted to the
5 laboratory by H. W. Miller for comparison against the
6 photographs that I originally looked at.

7 Q. All right, to try to make it clear, this is a new
8 pair of shoes that were bought for the purpose of you just
9 looking at and comparing the type sole pattern; is that
10 correct?

11 A. Yes, sir, because it is my understanding the
12 original shoes that could have been recovered or an original
13 pair of shoes have never been recovered. In our conversation
14 with Investigator Miller, we discussed that if I had a pair
15 of shoes of similar style, of the same style and make, then I
16 could compare the impressions against that pair of shoes to
17 see if that impression was consistent with a pair of shoes
18 that style and that size. And that's the examinations I
19 conducted with this pair of shoes.

20 Q. As an expert in the field of footwear impressions,
21 do you find it necessary from time to time to rely on
22 manufacturers to give you information about different shoes
23 and shoe soles?

24 A. Yes, sir. Because there are so many different
25 styles of shoes available, one of the forensic examiners best
26 sources of information is the manufacturer, and they can
27 provide you information regarding how many different styles
28 of shoes will have the same out sole design and what
29 quantities of shoes were produced in that particular style

1 and size.

2 Q. All right, the shoes, look and see; I think that
3 box is Exhibit 90?

4 A. Yes, sir. It is marked on the top of the box as
5 State's Exhibit 90.

6 Q. All right, give me the exhibit number off of the
7 box that was submitted.

8 A. It's State's Exhibit 61.

9 Q. Okay, thank you. The shoes in Exhibit 90 are what
10 make, model-- make, style and size?

11 A. The shoes in State's Exhibit 90 are a size ten and
12 a half, and they are stock number 1-B136 C-150.

13 Q. And what particular style are they?

14 A. They are a Grant Hill Olympic, I believe.

15 Q. All right, and Exhibit 61?

16 A. Exhibit 61 is listed as a Grant Hill II MID, size
17 ten and a half, and they are style number 1-B136-150.

18 Q. And your information from the manufacturer about
19 those two different styles, do they, in fact, carry the same
20 out sole pattern?

21 A. According to the manufacturer's information that I
22 got directly from a representative from Fila, all of the
23 Grant Hill II designs have the exact same out sole pattern.

24 Q. So the new shoes that you have in front of you
25 would have the exact same pattern as the type of shoes that
26 originally came in the box, Exhibit 61?

27 A. Yes, sir. That's correct.

28 Q. Based upon having these shoes to compare, did you
29 make any tests?

1 A. Yes, sir. I did. I took test impressions from the
2 soles of the new shoes in State's Exhibit 90 and used those
3 test impressions to compare against the photographs of the
4 impressions in State's Exhibits 93, 94, 95 and 96 to
5 determine whether or not they were consistent in size, shape,
6 and out sole design.

7 Q. And what was your determination?

8 A. The shoes in State's Exhibit 90, the out sole
9 design on, especially on the heel area of the right shoe is
10 consistent in size, shape, and out sole design with the
11 impressions that are present in the photographs in State's
12 Exhibits 93, 94, 95 and 96.

13 Q. All right, do one or two of those photographs more
14 clearly show the impression than the others?

15 A. Yes, sir. Two of the photographs, two of the
16 photographs are of the same-- are copies, are photographs of
17 the same impression.

18 Q. All right, would you take one of the best
19 photographs and the right shoe and step down in front of the
20 jury, please.

21 A. I will take State's Exhibit 95.

22 Q. Okay. And you are taking the right shoe out of
23 Exhibit 90?

24 A. Yes, sir. That's correct.

25 Q. If you would, you may have to show in different
26 sections to make sure the whole jury sees. Would you point
27 out to the jury where you, what part of that shoe or the shoe
28 just like that you determined left this bloody shoe
29 impression?

1 A. Yes, sir.

2 BY MR. LUMUMBA: Objection. I don't think
3 that the gentleman has ever determined that that
4 shoe or a shoe like that left the impression. I
5 think what he said is that they were consistent. I
6 think that is a lot different than saying that that
7 shoe left the impression. He can correct his own
8 testimony, but I think that is a misstatement of
9 his testimony.

10 BY THE COURT: I don't think he has testified
11 exactly that way, but he can testify as to what he
12 did.

13 BY MR. EVANS: May he proceed, Your Honor?

14 BY THE COURT: Yes, sir.

15 BY THE WITNESS:

16 A. If you will, first of all, look at the impression
17 itself in State's Exhibit 95, you will see the most
18 outstanding thing is this part of the impression that looks
19 like an "A." As you look at the heel area on the shoe on
20 State's Exhibit 90, you will see that there is also a design
21 that looks pretty much like an "A." As I stated earlier, I
22 took test impressions from this shoe and produced a clear
23 overlay that I could actually lay on top of the impression,
24 but one of the things you have got to remember when you look
25 at the impression and you look at the shoe like this, they
26 are reversed. The shoe actually makes the impression in this
27 manner, but I compared the overlaid impression against the
28 photograph and determined that all of the characteristics,
29 when you line the "A" characteristic up, all of the Chevron

1 designs, the up and down marks from the bottom of the shoe,
2 all lined up with this impression.

3 You will also notice that there is a ribbed area
4 that goes from the fore foot part of the shoe down to the
5 heel, and that shape of that ribbed area actually has a hump
6 on one side of it that is consistent with the hump that is
7 produced in the side of the impression in the photograph.

8 You will also notice, and it is very hard to see,
9 but you can actually see the edge of a mark at the top of the
10 hump that is consistent in size and shape with the edge of
11 the "F" in the Fila.

12 Q. Now if you would, step down so that you can kind
13 of-- you don't have to go back through all of it, but point
14 out to the ladies and gentlemen of the jury at this end what
15 you determined. Would it help if I held this?

16 A. I will have one more hand. You can see the "A,"
17 and you see the little squiggle mark. You see the "A" and
18 the kind of a two on the top of it? Then the size and the
19 shape of the Chevron patterns, the "V" patterns, all lined up
20 exactly with a shoe this size.

21 Q. All right. Thank you. You may take your seat
22 again.

23 A. (Witness resumes witness stand.)

24 Q. All right, that would show you that the shoe
25 impression, bloody shoe impression was consistent with that
26 style and size shoe; is that correct?

27 A. Yes, sir. That's correct.

28 Q. And as far as the actual size shoe, what all helps
29 you determine what size shoe left that impression?

1 A. The size of the shoe, different, different sizes of
2 shoes are slightly different in length and width, and
3 therefore, there will be differences in the size of the
4 design characteristic from the bottom of the shoe. Usually
5 as the shoe increases in size, either the edges of the design
6 will actually be larger, or they will move the design
7 further, the elements of the design further apart to take up
8 the space. Most shoe manufacturers, their shoes in half
9 sizes vary 3/16ths of an inch from one size to the next. So
10 you can never look at an impression and say absolutely it is
11 one specific size, but normally you can narrow it down within
12 one size range for a particular impression.

13 Q. Okay, and would it be your expert opinion based
14 upon your experience, your training and your comparison in
15 this case that the bloody shoe impressions that you examined
16 that were recovered from Tardy Furniture would be consistent
17 with having been made by the type of shoe that was originally
18 purchased in Exhibit 61, the right heel of that shoe?

19 A. A shoe such as the right shoe in State's Exhibit 90
20 could not be excluded as having produced the impressions in
21 State's Exhibit 93, 94, 95 and 96.

22 Q. All right, sir. And based upon your experience and
23 your training, are you familiar with any other type of shoe
24 that would have that exact same pattern and out sole?

25 A. According to Fila, this is the only brand and make
26 of shoe that they make that has this out sole. I'm not
27 familiar with any others, but it's possible that another shoe
28 exists, but I have never seen another one with this same
29 design.

1 Q. In your experience you are not familiar with
2 another one?

3 A. That would not be routine; no, sir.

4 Q. Other than comparing the bloody shoe tracks, were
5 you also asked to conduct any other tests?

6 A. Yes, sir.

7 Q. And what was that test?

8 A. I was asked to examine a sample of, a gunshot
9 residue sample for the presence of gunshot residue.

10 Q. I will hand you Exhibit 86. Let me move these out
11 of your way. I will ask you to examine that exhibit and see
12 if you can identify it?

13 A. Yes, sir. I can. It's a standard gunshot residue
14 evidence collection kit marked with the name Curtis G.
15 Flowers. I can recognize it by the Crime Laboratory case
16 number, exhibit number, and it bears my initials on the green
17 seal.

18 Q. Can you explain to the ladies and gentlemen of the
19 jury what that is?

20 A. Yes, sir. If I can open it?

21 Q. You can.

22 A. Inside the kit are four sample vials. To explain
23 very briefly what the gunshot residue test is; any time a
24 person is involved in the discharge of a firearm, there are
25 particles produced during that discharge that can be
26 deposited on the hands or the clothing of the person in close
27 proximity to the weapon. We do gunshot residue tests mainly
28 on hand samples collected from individuals who are believed
29 to have been involved in such a situation. And the samples

1 consist of a small aluminum stub that is coated with an
2 adhesive tape, and we actually, the samples are actually
3 collected by gently patting that adhesive tape on to the
4 surface of the hand that you are sampling.

5 Those samples are then submitted to the Crime
6 Laboratory, and we examine them using a technique called
7 scanning electron microscopy with energy dispersive x-ray
8 analysis. Basically, what it is is we put them in a
9 scanning electron microscope which allows us to look for
10 microscopic size particles. Then if we can find those
11 particles, the x-ray analyzer allows us to conduct an x-ray
12 analysis of those particles and determine their elemental
13 composition.

14 Gunshot residue has been found to have a very
15 unique elemental composition composed mainly of the elements
16 lead, barium, and antimony. So if you can find particles on
17 the sample stubs that have the correct particle morphology,
18 which is size and shape, and have the correct elemental
19 composition, that allows you to positively identify those
20 particles as gunshot residue.

21 Q. Now I notice there are four different vials there.
22 Is there a reason for that?

23 A. Yes, sir. A standard, the standard gunshot residue
24 kit used by the Mississippi Crime Laboratory utilizes four
25 samples: Those samples being samples from the back of the
26 right hand, the palm of the right hand, the back of the left
27 hand, and the palm of the left hand. So each one of those is
28 a separate sample, so a kit normally has four samples.

29 Q. So from that kit you would know what part of a hand

1 the powder was recovered from if there was powder there; is
2 that correct?

3 A. Yes, sir.

4 Q. Or gunshot residue?

5 A. Yes, sir.

6 Q. Did you have an occasion in this particular-- well,
7 first, what information do you have with that kit of who that
8 gunshot residue kit was recovered from?

9 A. There is an information sheet also included in the
10 kit which bears information supplied by the officer
11 collecting the kit as to the individual it was collected from
12 and the time and the circumstances of that collection.

13 Q. What officer collected that?

14 A. This particular kit was collected by Jack Matthews.

15 Q. Who was it collected from?

16 A. From Curtis G. Flowers.

17 Q. Does it tell what time the kit was collected?

18 A. According to the information on the bottom of the
19 sheet, on 7-16 of '96 at 14:00, which would be 2:00 PM.

20 Q. All right, before we get into it, that brings up
21 another question I want to go into. I want you to assume at
22 this point that we are talking about someone possibly
23 shooting a gun at a time period from say 10 o'clock in the
24 morning to approximately 10:20 in the morning. I further
25 want you to assume that the test kit, as the card shows, was
26 taken at 2:00 PM. Would that make any difference in the
27 normal recovery of evidence?

28 A. Yes, sir. It would.

29 Q. Would you explain that to the ladies and gentlemen

1 of the jury?

2 A. As I stated earlier, gunshot residue is deposited
3 as small microscopic particles upon the hands of the person
4 discharging a weapon. Because this residue is particulate in
5 nature, it can be easily removed. Any type of normal
6 activity can remove those particles from your hands.
7 Different, several different studies have been conducted
8 using hand samples from people who have discharged weapons,
9 and it is normally considered that you, if you are going to
10 collect such samples as these, that you need to normally try
11 to collect them within four hours of the time of the
12 shooting. The cut-off is usually considered somewhere
13 between four and six hours. After that period of time, it is
14 very unlikely that you will find those particles because they
15 can be lost.

16 Q. Okay, and we are talking about from the scenario
17 that I gave you, approximately four hours to four hours and
18 20 minutes; is that correct?

19 A. Yes, sir.

20 Q. Okay. What type of test did you, in fact, conduct
21 on these vials?

22 A. As I stated earlier, these were subjected to
23 scanning electron microscopy with energy dispersive x-ray
24 analysis.

25 Q. I know that sounds kind of confusing. But once you
26 conducted your test, what did you find?

27 A. The four samples were examined, and on the sample
28 submitted as being from the back of the right hand, I
29 recovered or identified one particle which could be

1 identified as gunshot residue.

2 Q. And you say that particle is gunshot residue?

3 A. Yes, sir.

4 Q. Can you exclude that particle from being anything
5 else except gunshot residue?

6 A. Because of the particle morphology and its
7 elemental composition, that particle is considered unique to
8 gunshot residue.

9 Q. So because of that reason, you know for a fact that
10 it was, in fact, gunshot residue. Is that correct?

11 A. Yes, sir.

12 Q. Again, if you don't mind, I hate to keep getting
13 you back and forth, but if you would, step down in front of
14 the jury for a moment.

15 A. (Witness complies.)

16 Q. I want you to describe to the ladies and gentlemen
17 of the jury the parts of the hand that each sample is
18 supposed to come from?

19 BY MR. LUMUMBA: I would object to that, the
20 parts of the hand the sample supposedly come from.
21 I think what is important is where it does come
22 from.

23 BY THE COURT: Well, he is talking about in
24 the routine of normal-- routine procedure is what
25 he is talking about, I assume.

26 BY MR. EVANS: Yes, sir.

27 BY MR. LUMUMBA: Very good.

28 BY MR. EVANS:

29 Q. You may proceed.

1 A. Each gunshot residue kit comes with an instruction
2 sheet for officers who have never taken one before. Those
3 instruction sheets show diagrams of the areas of the hands
4 for these samples. When we talk about a sample from the back
5 of the right hand, we are talking about the area from the
6 index finger to the thumb and mainly in the web area between
7 that on the outside of the hand. When we talk-- and the same
8 thing will go for the back of the left hand. We are talking
9 about the area on the back of the thumb, the web area between
10 the thumb and the first finger and the back of the first
11 finger. If you think about it, if you are talking about
12 gunshot residue, those would be the areas if you held a gun
13 in a normal fashion that would be exposed to residue being
14 emitted from a gun.

15 When we talk about palm samples, we are normally
16 talking about the palmar surface and the inside surfaces of
17 the fingers.

18 Q. Okay. Have a seat again if you don't mind.

19 A. (Witness resumes witness stand.)

20 Q. All right, Mr. Andrews, you did not conduct the
21 actual testing of the projectiles and things like that; is
22 that correct?

23 A. No, sir. I did not.

24 Q. So for the benefit of your testimony, I would like
25 for you to assume that the weapon that was involved in this
26 case was a .380 semi-automatic pistol. With that type of
27 pistol, if it was being held in the hand and fired, what part
28 of the hand would you most likely be able to recover gunshot
29 residue from?

1 A. If you hold it in a normal fashion, you would
2 normally expect residue being deposited from the weapon to be
3 deposited on the back of the hand in that area between the
4 thumb and the first finger.

5 Q. All right, and is that the test kit that showed the
6 gunshot residue?

7 A. Yes, sir; it is.

8 Q. On the back of the right hand?

9 A. Yes, sir.

10 BY MR. EVANS: Tender the witness.

11 BY MR. LUMUMBA: May we proceed, Judge?

12 BY THE COURT: Yes, sir.

13 BY MR. LUMUMBA: Thank you very much.

14 CROSS-EXAMINATION BY MR. LUMUMBA:

15 Q. Good afternoon, Mr. Andrews.

16 A. Good afternoon.

17 Q. Trip from Jackson all right up here?

18 A. Yes, sir.

19 Q. I just have a few questions. Based on your tests,
20 first of all, you don't, you didn't take any kind of residue
21 off of Mr. Curtis Flowers' hand yourself, did you?

22 A. No, sir. I just examined the samples that were
23 submitted.

24 Q. So you don't know whether or not the officers who
25 were supposed to take it, of course, did it right or whether
26 it was contaminated or anything like that?

27 A. No, sir.

28 Q. Okay. Well, let's assume that they did it right
29 first, okay, which is something we don't really know at least

1 at this point; is that correct?

2 A. I don't know, sir.

3 (NOTE: Mr. Freelon enters the courtroom.)

4 Q. Okay, but assuming that they did it right, I think
5 that what your tests showed that there was like a microscopic
6 particle which was in your tests found. Is that correct?

7 A. Yes, sir.

8 Q. Okay, that microscopic particle that was found, if
9 I understand it correctly, does not prove that Curtis Flowers
10 actually fired a gun. Isn't that true?

11 A. No, sir. Normally the presence of residue,
12 forensically you can draw one of three conclusions or three
13 possible conclusions. Either that person has been in the
14 environment of-- well, he has been in the environment of a
15 recently discharged weapon. He either had that weapon in his
16 hand when it was discharged, or his hand was in close
17 proximity to a weapon when it was discharged, or he has
18 handled an object that has residue on it to get that residue
19 on his hands.

20 Q. Or he came into something that transferred residue
21 to his hand?

22 A. Well, that would be the third possibility is to
23 have handled something that has residue on it.

24 Q. And residue depending upon-- when you shoot a gun
25 and you don't clean it, residue stays on it. Isn't that
26 true?

27 A. A lot of residue is deposited on the weapon itself
28 during the discharge.

29 Q. Right. And if you pick up a gun which has residue

1 on it because it hasn't been cleaned, then you can get gun
2 residue on your hand. Is that true?

3 A. Yes, sir.

4 Q. And the residue we are talking about, you cannot
5 say that any residue that you found in relationship to this
6 case was actually fired, came from a pistol, can you?

7 A. No, sir. All I can tell you it came from a
8 discharged weapon.

9 Q. Okay, so the weapon could have been a shotgun?

10 A. Any weapon that uses modern primer technology, that
11 residue could have come from any of those weapons.

12 Q. And perhaps for the ladies and gentlemen who might
13 be unfamiliar with guns; maybe most are, but some might be
14 unfamiliar with guns; there is literally hundreds and
15 hundreds of pistols. Isn't that true?

16 A. Different sizes, calibers, makes; yes, sir.

17 Q. And there is literally hundreds if not thousands of
18 rifles; isn't that true?

19 A. I don't know about the thousands, but there are a
20 lot of them out there. Yes, sir.

21 Q. So you cannot tell us whether out of those
22 thousands or hundreds of rifles which are out there whether
23 this residue came from one of those or another one of those.
24 You can't say that?

25 A. No, sir.

26 Q. And you cannot say whether or not of those hundreds
27 of pistols which are made, and we are just talking about
28 different types; is that correct?

29 A. Types, calibers, makes, and models; yes, sir.

1 Q. Out of all that, you couldn't say whether residue
2 came from any one of those; is that true?

3 A. No, sir.

4 Q. And you can't say that the residue which did come
5 from whatever gun-- well, strike that for a moment. Not only
6 is it true that there is hundreds of different types, but any
7 individual type, for instance, a .380; there is obviously
8 thousands and thousands of .380's which are made themselves.
9 Isn't that true?

10 A. Yes, sir.

11 Q. Okay, and there are thousands of .32's or .38's and
12 various different types. Isn't that true?

13 A. There are numerous types. Yes, sir.

14 Q. And numerous types of rifles and numerous types of
15 shotguns. Isn't that true?

16 A. Yes, sir.

17 Q. Okay, when we get through going through all the
18 multiple kinds and the hundreds of types of guns which
19 actually are made, and then we go through all the guns which
20 are in each one of those individual types, I think that what
21 you just told me before you still can't even say that
22 actually any residue that you found -- and it was just a very
23 small piece of residue; is that correct?

24 A. It was one single particle.

25 Q. Yes. It's the smallest amount that you can find
26 and conclude that it came from a gunshot residue; is that
27 true?

28 A. Yes, sir.

29 Q. Okay, in other words, if it would have been any

1 less, you couldn't even say whether it came from gunshot
2 residue; is that true?

3 A. Yes, sir. That's correct.

4 Q. Okay, and so you can't say after we go through all
5 the hundreds and thousands and things of that nature, you
6 still can't say that the person that it came from, assuming
7 that it came from the person they said it came from, that
8 that particular person actually fired a gun. You can't say
9 that?

10 A. No, sir.

11 Q. Okay, all you can say is that either that person
12 came into, like you said, and I think you said it very well.
13 You said that that person was in an environment where it may
14 have been fired; true?

15 A. Yes, sir.

16 Q. Okay, that person could have gotten it transferred
17 from somewhere else; true?

18 A. Yes, sir.

19 Q. Okay, and in fact, I think you will agree with me
20 that if a gun is not cleaned, gunshot residue can actually
21 stay on that gun for a period of time. Is that true?

22 A. Yes, sir.

23 Q. Okay, in fact, it can stay on there for a long
24 period of time if they just put it away somewhere and don't
25 clean it. Is that true?

26 A. Yes, sir. That's correct.

27 Q. And then when somebody goes and moves it or touches
28 it or toys with it or whatever they do, they can pick up
29 gunshot residue. Is that true?

1 A. Yes, sir.

2 Q. Actually you can get gunshot residue from shaking
3 somebody's hand; isn't that true?

4 A. That is possible. Yes, sir.

5 Q. Okay. And you can get gunshot residue from being
6 in a place where somebody who had gunshot residue on their
7 hand has recently sat or deposited residue on some kind of
8 object, table or things of that nature; is that correct?

9 A. If you touch that area where that residue is and
10 pick it up on your hands, yes, sir.

11 Q. I would imagine if somebody has, who shoots a gun
12 or has a gun or that recently touched a gun that has residue
13 on it, because if they touch a gun that has residue on it,
14 even if the gun has not been recently fired, they may pick up
15 residue. Is that true?

16 A. If the gun has residue on it; yes, sir.

17 Q. And so if you are in a police station where people
18 have a bunch of guns generally speaking; right?

19 A. Most policemen carry weapons.

20 Q. And they have, and they touch their guns, they may
21 very well have residue on their hands. Isn't that true?

22 A. Yes, sir.

23 Q. If you shake their hands, that might get residue on
24 your hands; right?

25 A. That is a possibility.

26 Q. If you use a pencil that they use or a pen that
27 they use, that might have residue on it. That might transfer
28 residue to your hands?

29 A. If there is residue on the pencil, you could get it

1 on your hands.

2 Q. And it very easily, this microscopic piece of
3 particle that you found could very easily fit on a pencil;
4 right?

5 A. Yes, sir.

6 Q. Okay. In fact, it probably could be fit on a
7 pencil maybe multiple times; right?

8 A. Yes, sir.

9 Q. Maybe ten, fifteen, a hundred times?

10 A. If you are talking about the size of the particles,
11 this is a microscopic particle.

12 Q. All right. Like 1/25,000 of an inch or something
13 like that?

14 A. I believe the particle in this particular case was
15 approximately 2 microns in size, which there are 25,400
16 microns in an inch. So you are talking about an extremely
17 small particle.

18 Q. Right, and I'm not trying -- of course, you only,
19 you just participated in the investigation to the extent that
20 you examined the things that were brought to you. Isn't that
21 true, Mr. Andrews?

22 A. Yes, sir; that's correct.

23 Q. Okay, and so this question may not totally have
24 significance to you, but let me ask you this. Actually, you
25 don't know how many other persons say like in Winona or who
26 have been to Winona on any particular day like the 16th of
27 July may have had gunshot residue on their hands? Obviously,
28 you don't know that?

29 A. The only way to know that would be to test them.

1 Q. Okay, but that's right; you have got to test them;
2 right?

3 A. Yes, sir.

4 Q. Did they ask you to test the hand of Doyle Simpson?

5 A. The only sample I examined in this case was this
6 sample from Curtis Flowers.

7 Q. Okay, so you got no sample from Emmitt Simpson?

8 A. I got no other samples submitted in this case.

9 Q. Okay. Now let me ask you this. As far as, as far
10 as-- and so the question I began with is the question I end
11 with as far as residue is concerned. We certainly cannot
12 look at this test that you did to say that with any degree of
13 certainty Curtis Flowers-- well, first of all, you can't say
14 because you weren't there that anything actually came off of
15 Curtis Flowers' hands. And I'm not trying to put any
16 question on any police officer. But you personally cannot
17 vouch for the fact that anything came off his hands, can you?

18 A. All I can tell you is there is a particle on that
19 sample. I can't personally tell you where that sample came
20 from.

21 Q. And certainly we can't say that even if it was
22 there, that he fired a gun that day; right?

23 A. As I told you earlier, the three conclusions that
24 you can draw is this person either fired a weapon, was in
25 close proximity to a weapon, or he handled something that had
26 residue on it.

27 Q. And certainly even if he had fired a weapon, there
28 is no way we can say that he ever fired a weapon inside of
29 Tardy's store?

1 A. Not based on this test, no, sir.

2 Q. Okay. Now let me ask you this. Let's deal with
3 the question of the shoe print. Now I notice that at a
4 certain point the District Attorney asked you a question, and
5 you answered that question with I think perhaps a slight
6 correction. I think he asked you could you say, could you
7 tell him from your examination - and I'm not trying to use
8 his exact words - that this shoe made the impression or a
9 shoe like this. He certainly didn't say this shoe, but that
10 a shoe like this made the impression that you examined, and
11 what you did if I'm not mistaken is corrected him and said
12 that what you could tell him is that a shoe like this could
13 not be excluded from making this impression. Is that what
14 you said?

15 A. Yes, sir. That's correct.

16 Q. And what that means is that you are not saying that
17 a shoe like that made that impression. You are saying that
18 you cannot say that a shoe like this did not make that
19 impression; right?

20 A. By stating that the shoe cannot be excluded as a
21 source or a shoe of this size and make could not be excluded
22 as a source, I am stating that that shoe, the out sole design
23 of that shoe is consistent with that impression in physical
24 size, shape and design.

25 Q. Yes.

26 A. Because of the possibility that there could be
27 another make of shoe out there that has that same out sole
28 design, I cannot positively say it would be a shoe of that
29 make and design.

1 Q. And that's what I was going to get to. In other
2 words, there actually could be other shoes out there not even
3 made by Fila of that same design. Isn't that true?

4 A. It would be unusual, but I can't rule out the
5 possibility.

6 Q. Okay, let me ask you this. We had a brief
7 discussion earlier today; isn't that true?

8 A. Yes, sir.

9 Q. And we talked about there is a lot of-- quite
10 frequently you have copycat designs; isn't that true?

11 A. Yes, sir.

12 Q. In fact, and sometimes in other countries which
13 sell shoes all over the world as a discount rate they copy
14 designs which are already out there, and they sell them.
15 Isn't that true?

16 A. I'm not really aware of how big a problem it is for
17 Fila, but to give you an example, Nike, a lot of the out
18 soles or a lot of the shoes that Nike sells are produced
19 overseas. And one of the problems that Nike recognized
20 several years ago is that sometimes at the manufacturer where
21 the soles are being produced, soles that maybe are excluded
22 because of quality control from being a Nike shoe, wind up
23 being sold out the back door to some small shoe manufacturer,
24 and they will use those out sole designs on their brand of
25 shoe. It is relatively uncommon, but it does happen.

26 Q. And it happens with popular shoes?

27 A. Yes, sir.

28 Q. And Nike was a popular shoe?

29 A. Yes, sir.

1 Q. And Fila is a popular shoe?

2 A. It is becoming very popular; yes, sir.

3 Q. And Reebok and some others ones are popular shoes?

4 A. Yes, sir.

5 Q. Okay, now let me ask you this. So basically, and
6 basically you have no files where you just go to and
7 determine what shoes exist and what out soles designs exist.
8 You don't have a file like that?

9 A. No, sir. There, and as far as I know, there is one
10 shoe file that contains every known shoe design in the world,
11 but there are shoe files that contain a significant number,
12 but we do not have one of those.

13 Q. Well, let's just-- so first of all, one of the
14 reasons you made a statement like you did to the District
15 Attorney is because as you have just shared with the ladies
16 and gentlemen of the jury very clearly, you cannot exclude
17 the possibility that there could be a similar design. Is
18 that correct or a same design?

19 A. Yes, sir.

20 Q. On another shoe?

21 A. Yes, sir.

22 Q. On another make of shoe; right?

23 A. Yes, sir.

24 Q. Okay. Now secondly, let's just talk about Fila
25 shoes. You have no idea how many people may be in Winona or
26 have been in Winona or come from someplace else and went
27 through Winona who wear Fila shoes?

28 A. No, sir.

29 Q. And in fact, what you did do, just like you checked

1 with Fila on some other things, you checked with Fila to find
2 out how many shoes they made over a period of time that
3 actually have these designs on the bottom. Is that correct?

4 A. Yes, sir. I did.

5 Q. And you also were good enough to talk to me and to
6 share that with me. Isn't that true?

7 A. Yes, sir.

8 Q. Okay, and wouldn't it be safe to say that the
9 information that you received, first of all, in your
10 expertise I think that I listened to you carefully; you
11 cannot even say that the impression was made by a size ten
12 and a half shoe, can you?

13 A. Not exactly, no, sir.

14 Q. Right. In fact, it is just as likely that it could
15 have been made by a-- and this is partly based upon
16 information you got from Fila if I'm not mistaken, and you
17 correct me if I am wrong, that it could have just as likely
18 been made by a size 10 or a size 11 shoe. Isn't that true?

19 A. According to the information from Fila, each shoe
20 size varies 3/16ths of an inch per half size, and their
21 quality control is good within 3/16ths of an inch. So
22 therefore, the information Fila sent me, they sent me
23 information for a ten, a ten and a half, and an eleven.
24 Those would be considered the limits of sizes that could have
25 produced an impression that size.

26 Q. So each one of those sizes would have been
27 consistent with the impression you saw?

28 A. They couldn't have been ruled out; no, sir.

29 Q. Right. And they wouldn't, and if you had another

1 size like a size eleven, that couldn't be-- that is as
2 consistent as the size ten and a half with that impression?

3 A. I wouldn't know for sure unless I actually had that
4 size eleven to look at, but it would not be impossible for a
5 size eleven to be that same size.

6 Q. Okay, and the same thing with size ten. To the
7 best of your knowledge at this time, no one gave you these
8 sizes, but to the best of your knowledge and certainly based
9 on the information from Fila, you could not rule out that
10 that would be just as consistent with the impression as the
11 size ten and a half. Isn't that true?

12 A. Yes, sir. That's correct.

13 Q. Okay, so you really don't know what size shoe
14 precisely made the impression. Isn't that true?

15 A. No, sir.

16 Q. Now let me ask you this. You actually found out
17 from Fila that there were two hundred and-- during the period
18 that you checked for, there were 221,393 shoes of that make
19 and model which were made size ten. Is that correct? And
20 shipped, I guess they say shipped out?

21 A. They say shipped; yes, sir.

22 Q. And that was over 200,000 shoes that were shipped
23 of size ten of that make and model?

24 A. There was 221,393 for size ten.

25 Q. Okay.

26 A. That is pairs.

27 Q. Pairs, right. So there is more shoes if you
28 multiply-- well, so that means if you multiply them, then
29 there were twice that many shoes, but that many pairs;

1 right?

2 A. Yes, sir.

3 Q. And it is also safe to say that as far as ten and a
4 half, there was 221,189 ten and a half's which were shipped
5 out; is that correct?

6 A. Yes, sir.

7 Q. And there were 200,199 eleven's that were shipped
8 out; is that right?

9 A. Yes, sir.

10 Q. And if you put all of those together, you have over
11 600,000 shoes which were made during the period of time that
12 you checked for which included a time possible for these
13 shoes to have been purchased. Is that correct?

14 A. Yes, sir. That's correct.

15 Q. Okay. In fact, one of the things you found out
16 from Fila, that this shoe was produced in 1995. Isn't that
17 true?

18 A. The introductory date for which shoe? The shoe I
19 actually examined?

20 Q. Right.

21 A. The introductory date for that shoe was - that's
22 the B136 C-150 - was 6-15 of '96.

23 Q. 6-15 of '96?

24 A. Yes, sir.

25 Q. How about the other one?

26 A. The other, the one for the empty shoe box?

27 Q. Right.

28 A. That is the B136-150. Its introduction date is
29 listed as November the 15th of '95.

1 Q. It's a '95 shoe; right?

2 A. Yes, sir. That's its introduction date.

3 Q. Okay. So it would have been new in '95. That's
4 when it would have been new, in 1995?

5 A. Yes, sir. That's the earliest that you could have
6 bought that shoe would have been November of '95.

7 Q. Okay. And so actually it would have been many
8 months old as of July of 1996; right?

9 A. It could have been depending on how long it sat on
10 the store shelf.

11 Q. I see. Now let me ask you this here. I notice
12 that you also say this box was submitted for fingerprints; is
13 that correct?

14 A. Yes, sir.

15 Q. And you don't know what the results of those
16 fingerprints analysis were of your personal self, do you?

17 A. No, sir. I didn't conduct that exam.

18 Q. Okay, and of course, the reason that you do that is
19 to see if you can determine who touched the box; right?

20 A. Yes, sir.

21 Q. Okay. Now let me ask you this. And of course, you
22 have no way of knowing of your own knowledge who, whether
23 that box, where it came from originally; right?

24 A. No, sir.

25 Q. Or how long it was where it was before the police
26 picked it up; right?

27 A. No, sir.

28 Q. Or whether it came from somebody else before it got
29 to where the police picked it up. You don't know any of

1 that?

2 A. No, sir. I don't.

3 Q. Okay, but in any event, I think that -- now this is
4 the inquiry I have because I forgot to ask you about this
5 earlier. Do we know for certain that the impressions that
6 you found in, that is found in the pictures which were
7 presumably taken from the store, do we know for certain that
8 each one of these impressions came from the exact same shoe?

9 A. From the exact same shoe?

10 Q. Can we say that?

11 A. No, sir. There is not sufficient detail in the
12 impressions to look for individual characteristics to say
13 that all three of those impressions were the same exact
14 shoe. But they are all consistent in size, shape, and
15 design.

16 Q. Which would mean that they could have come from
17 the same shoe, or they might not have come from the same
18 shoe?

19 A. If you are asking me is it possible that three
20 different shoes could have made those three impressions, yes,
21 sir; that is possible.

22 Q. Now or it could have been the same shoe?

23 A. Or it could have been the same shoe. There is no--

24 Q. --We really don't know.

25 A. Without looking for individual characteristics that
26 would identify all those as being made by one shoe, I can't
27 say.

28 Q. Right, and in fact, when shoes are worn, when shoes
29 are worn-- strike that. Okay, I noticed in reading over your

1 summary of your testimony last time, you have indicated that
2 some of the detail in the impression was covered up by the
3 substance that the impression was in. Did that happen?

4 A. Yes, sir. If you look at those impressions of--
5 they were submitted to the laboratory as being bloody
6 impressions. You can tell that whatever the material is that
7 the impression is in, in some places there was an excessive
8 amount of that material that basically blotted out some of
9 the detail.

10 Q. Okay, now the only pair of shoes that-- you did
11 have a pair of shoes, and you don't know how many pair of
12 shoes are actually at the home of where-- you don't really
13 know how many pair of shoes was at the home of the Defendant,
14 do you?

15 A. No, sir.

16 Q. Okay, you have no way of knowing. But for whatever
17 reason, they only brought you one pair of shoes. Is that
18 true?

19 A. There was one pair of shoes submitted as being from
20 Curtis Flowers.

21 Q. Okay, and that pair of shoes, that did not match
22 the impression. Is that true?

23 A. Yes, sir. That's correct. That was a pair of Nike
24 Flight athletic shoes, and they had a completely different
25 sole design.

26 Q. And so that would be in a case where you can say
27 that that shoe was actually excluded from being the shoe that
28 would have made that impression?

29 A. Yes, sir. That shoe could not have made those

1 impressions.

2 BY MR. LUMUMBA: Excuse me. Bear with me one
3 minute, please, Mr. Andrews.

4 BY THE WITNESS: Yes, sir.

5 (Pause while Mr. Lumumba confers with Mr.
6 Freelon and with the Defendant.)

7 BY MR. LUMUMBA: Thank you, Mr. Andrews. I
8 have no other questions.

9 BY THE WITNESS: Thank you.

10 (Mr. Freelon leaves the courtroom.)

11 **BY THE COURT:** Redirect?

12 BY MR. EVANS: Yes, sir, briefly.

13 (Mr. Horan leaves the courtroom.)

14 REDIRECT EXAMINATION BY MR. EVANS:

15 Q. Mr. Andrews, first I will go back into the shoes
16 real quickly. Of course, you don't know where this shoe box
17 came from that was submitted to you other than what you were
18 told; is that correct?

19 A. Yes, sir. That's correct.

20 Q. Assuming for the benefit of your testimony that
21 this shoe box came from the house that the Defendant was
22 living in, the type of shoes that originally came in this
23 shoe box, would this shoe, the right shoe that originally
24 came in this shoe box make the same type of impression, show
25 the same type of marks that were left in the bloody
26 impressions?

27 A. Yes, sir. It would.

28 Q. Now as to the gunshot residue, you have testified
29 that there are three possible ways of getting gunshot

1 residue. One is by actually firing the gun?

2 A. Yes, sir.

3 Q. One is by being in close proximity to someone
4 firing a gun which means if you fired a gun and I was
5 standing next to you, I might possibly get some on me. Is
6 that correct?

7 A. Yes, sir.

8 Q. And the other is by touching something that had
9 gunshot residue on it?

10 A. Yes, sir. That's correct.

11 Q. And if I picked up an object that had gunshot
12 residue on it - (NOTE: Mr. Evans picks up a cup.) -
13 whatever it be like that, what part of the hand would you
14 most likely expect to find the gunshot residue on from
15 picking something up?

16 A. If you handled something or if you picked something
17 up that has residue on it, you would normally expect that
18 residue to be transferred to the palms of the hand.

19 Q. And which part of the hand would you more likely
20 than not find gunshot residue on from a person that had fired
21 a gun?

22 A. Normally the best area to find evidence that the
23 person has discharged a weapon would be to look for residue
24 on the backs of the hands. That would be more consistent
25 with residue deposited during the discharge of the weapon.

26 Q. And is that the test kit that you found it on is
27 the back of the right hand?

28 A. Yes, sir. That's correct.

29 Q. And you have been asked about the size. All

1 particles of gunshot residue are very small; is that correct?

2 A. Yes, sir. Gunshot residue primer particles such as
3 these can range in size from less than a micron in diameter
4 to up to 50 microns in diameter.

5 Q. All right, and regardless of the size, the amount
6 that you tested was a sufficient size for you to know without
7 any doubt--

8 BY MR. LUMUMBA: --Judge--

9 BY MR. EVANS: --that this was gunshot
10 residue--

11 BY MR. LUMUMBA: Judge.

12 BY MR. EVANS: Wait a minute.

13 BY MR. LUMUMBA: Objection. I don't have any
14 problem with the testimony, but I would ask for the
15 witness to be able to testify himself instead of
16 being led.

17 BY MR. EVANS: Your Honor, this is an expert
18 witness. I am just asking for his opinion on a
19 certain set of facts.

20 BY THE COURT: Are you asking a hypothetical?

21 BY MR. EVANS: Yes, sir.

22 BY THE COURT: Okay. State your
23 hypothetical.

24 BY MR. EVANS:

25 Q. Assuming that a person fired a .380 semi-automatic
26 pistol, what-- with the right hand, what part of that hand
27 would you more likely than not expect to find gunshot
28 residue?

29 A. On the sample from the back of the right hand.

1 BY MR. EVANS: Nothing further from this
2 witness, Your Honor.

3 BY THE COURT: Is he finally excused?

4 BY MR. EVANS: Yes, sir.

5 BY THE COURT: You are free to go, Mr.
6 Andrews.

7 BY THE WITNESS: Thank you.

8 BY THE COURT: Break time.

9 (DURING THE AFTERNOON RECESS ON MARCH 26,
10 1999, MR. EVANS AND MR. LUMUMBA CONFERRED WITH THE
11 COURT, BUT MR. LUMUMBA STATED THAT IT DID NOT NEED
12 TO BE ON THE RECORD. FOLLOWING THE RECESS, THE
13 TRIAL CONTINUED IN OPEN COURT WITH THE COURT, ALL
14 COUNSEL WITH THE EXCEPTION OF MR. FREELON, AND THE
15 DEFENDANT PRESENT:)

16 BY THE COURT: Okay, I'm ready for the jury.
17 And we will need Mr. Balash again.

18 (JURY ENTERS THE COURTROOM.)

19 BY THE COURT: Ladies and gentlemen, I have
20 got a similar situation that we had at the first of
21 the trial. If you remember, we took an expert out
22 of order because the expert had to be somewhere
23 else. The Defense wants to recall Mr. Balash back
24 to the stand and -- you can have a seat right
25 there.

26 BY THE WITNESS, MR. BALASH: Thank you, Your
27 Honor.

28 BY THE COURT: And I'm going to, because of a
29 conflict with his schedule, I'm going to allow him

1 to testify out of order at this time.

2 BY MR. HORAN: Is this going to be direct
3 examination?

4 BY THE COURT: Yes. He is called as a Defense
5 witness.

6 BY MR. LUMUMBA: May I proceed?

7 BY THE COURT: Yes.

8 DAVID BALASH,

9 a white male recalled to testify but this time as a witness
10 for the Defendant, called out of order, having been
11 previously sworn, testified here as follows, to-wit:

12 DIRECT EXAMINATION BY MR. LUMUMBA:

13 Q. Good afternoon again, Mr. Balash.

14 A. Good afternoon, sir.

15 Q. I just have really a couple of questions for you.
16 We have had a presentation by both yourself and another
17 witness which helped us to understand about gunshot residue.
18 You understand what I'm saying?

19 A. Yes, I do, sir.

20 Q. Okay, and I just really want to just quickly go
21 through this. If I was to come up to you and you had gunshot
22 residue which you had collected on your fingers or on your
23 hand and we were to shake hands like this, where would the
24 gunshot-- could the gunshot residue be transferred to my
25 hand?

26 A. Certainly.

27 Q. And what part of my hand could the gunshot residue
28 be transferred to from this kind of exchange?

29 A. In that kind a lot of it would be in the web area,

1 depending, of course, on where the gunshot residue was on my
2 hand; a lot of it in the palm and finger area of the hand as
3 well.

4 Q. Okay. And so a lot of it could be, and if you only
5 had a little bit on your hand, I might only get a little bit
6 on my hand; is that correct?

7 A. Certainly.

8 Q. If I was to be at a police station and pick up a
9 pen which had gunshot residue on it and to write with that
10 pen, could I collect gunshot residue in the web of my hand?

11 A. You could.

12 BY MR. LUMUMBA: Those are my two questions.
13 Thank you very much.

14 BY THE WITNESS: You're welcome, sir.

15 CROSS-EXAMINATION BY MR. HORAN:

16 Q. Mr. Balash, those assumptions are based on other
17 assumptions; right, that someone actually handled or had
18 gunshot residue on their hand?

19 A. That was the assumption I was operating under; yes,
20 sir.

21 Q. And there are possibilities, as you have testified
22 to and Mr. Andrews likewise testified to, that you can handle
23 something; I could handle a gun. If I handled a gun that had
24 gunshot residue on it, it would be on my palm; right?

25 A. It should be, yes.

26 Q. And these tests are presumptive in nature. It's
27 not conclusive that someone fired a weapon, is it?

28 A. That is absolutely true. They are presumptive in
29 nature.

1 Q. If I were standing outside, let's say outside my
2 residence and I was arguing with my wife, and I told her, I
3 said, you know, you don't love me; I'm going to kill myself
4 or something like that, and I shot myself in the head; okay?
5 Really what you are testifying to is that unless you had
6 other factors to determine whether or not I actually fired
7 that weapon, there is no test that will give you a conclusive
8 determination as to whether or not I fired that weapon.
9 Other evidence has to be present; right?

10 A. That is correct, sir.

11 Q. Okay. It's a consideration of other factors to
12 make that determination. That's for the jury to decide?

13 A. To the best of my knowledge there is no test
14 currently that will establish beyond doubt that you have
15 fired a weapon period. There is no test available.

16 Q. And the scenario I have described to you, yourself
17 you have done a lot of gunshot residue kits, have you not?

18 A. I have and investigated a great number of shootings
19 as well.

20 Q. And if you were standing next to me outside my
21 residence when I did that and you were able to collect that
22 gunshot residue kit from me when I fired that weapon; you saw
23 me, and that would be more conclusive, would it not, that I
24 fired that particular weapon? Wouldn't it?

25 A. Well, I hope the eye witness testimony would.

26 Q. Would help--

27 A. --The test may come back positive or negative.

28 Q. Right.

29 A. It is not assured one way or the other.

1 Q. What happens to gunshot residue if someone would
2 wash the palm of their hands? Would it be necessarily--

3 A. --You would almost normally, it would almost
4 absolutely be removed. And again, it would be the amount of
5 vigor. If you washed your hands even remotely well, it would
6 be removed entirely.

7 BY MR. HORAN: No further questions.

8 BY MR. LUMUMBA: Just a couple of questions.

9 REDIRECT EXAMINATION BY MR. LUMUMBA:

10 Q. As far as the handling of a gun, I meant to ask you
11 that. The gentleman did raise the question. Let me ask you
12 this. If I was to pick up a gun, it really depends on how I
13 picked it up where the gunshot residue would be. Is that
14 true?

15 A. It depends if there is gunshot residue on the gun
16 to begin with.

17 Q. Right. But if I pick up a gun which does have
18 gunshot residue on it, which hasn't been cleaned or whatever,
19 and I pick it up and hold it -- say this is the barrel this
20 way, and I hold it in this fashion, and I don't have anything
21 long enough to really demonstrate what I'm doing. But if
22 you hold it like this by the handle, you could very well
23 still get gunshot residue on the back of your hands. Is that
24 true?

25 A. It would probably have to come into contact. The
26 back of your hand would have to come into contact with that--

27 Q. --right--

28 A. --portion of the weapon that had the residue on it.

29 Q. And there are ways to hold a gun or hold a gun

1 where that could very well happen; isn't that true?

2 A. Well, depending on how you hold it, sometimes the
3 back of your palm or the web comes right up to the slight
4 action on a semi-automatic pistol, for example, and you
5 actually come in direct contact with the gun with the back of
6 your hand.

7 Q. And the final question is this. If the test is
8 done correctly, when you test the back of someone's hand, can
9 you really say where on the back of the hand in this area the
10 residue comes from?

11 A. It depends on the type of test, sir.

12 BY MR. HORAN: Your Honor, I didn't go into
13 that on cross-examination.

14 BY THE COURT: I don't believe you did.

15 BY MR. LUMUMBA: Okay. Okay. I have no
16 further questions. Thank you.

17 BY THE COURT: He is finally excused now,
18 isn't he?

19 BY MR. LUMUMBA: Yes. Yes, sir. He is
20 excused.

21 BY THE WITNESS: Thank you, Your Honor.

22 BY THE COURT: Thank you.

23 WITNESS EXCUSED.

24 BY MR. LUMUMBA: Can we approach one second?

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
26 THE JURY AS FOLLOWS:)

27 BY MR. LUMUMBA: Yeah, I had a small
28 question. McSparrin, the fingerprint expert I
29 have, he really was the State's person but, you

1 know, he is no longer working for the state. Now
2 here is the problem. You know, I didn't know he
3 was outside, but he cannot testify, and the only
4 thing that I want. He is the one that actually
5 examined all the prints, and the only thing he is
6 going to say is that he found no prints that
7 matched. I don't necessarily have to call him
8 right now, but I would like to call him before we
9 leave here tonight. The reason why, he cannot be
10 here tomorrow. I talked to him. He can't be here
11 tomorrow, but I don't know who-- and I don't know
12 what the Court intends to do.

13 **BY THE COURT:** We are going tomorrow. I mean
14 if you asking me if we are going to be here, we
15 are.

16 **BY MR. LUMUMBA:** Oh, no, I'm not saying we are
17 not going tomorrow. What I'm saying he can't be
18 here tomorrow. He has got somewhere else he has
19 got to be. So I just wanted-- I mean I don't need
20 to call him right this minute. If they want to
21 proceed with their case and call him right before
22 we leave, I don't care if he is the last witness or
23 how we would do it. I don't know if they have any
24 people they feel that is going to be long.

25 **BY THE COURT:** Well, why don't we get to where
26 we are getting ready to quit and let me look at
27 that then.

28 **BY MR. EVANS:** Your Honor, if he wants to put
29 his case on first, we would have been glad to let

1 him--

2 **BY THE COURT:** --Wait a minute; wait a
3 minute. Can he be here Monday?

4 BY MR. LUMUMBA: He can be here Monday, yeah.

5 **BY THE COURT:** Okay, I am confident we are
6 going to be here Monday too.

7 BY MR. LUMUMBA: Okay, as long as he-- and can
8 I go out and make sure?

9 **BY THE COURT:** You can-- come here. If you
10 can assure me we will be through tomorrow, I will
11 let you put him on today. (Court laughs.) I am
12 talking to you.

13 BY MR. LUMUMBA: Oh, me? Well, I can't assure
14 you of that.

15 **BY THE COURT:** I know you can't.

16 BY MR. LUMUMBA: Can I just run out there and
17 tell him that right quick?

18 **BY THE COURT:** Yeah, that will be fine.

19 (Mr. Lumumba left the courtroom.)

20 **BY THE COURT:** Who are y'all going to want?

21 BY MR. EVANS: Jack Matthews.

22 (Both Defense Counsel as well as the witness
23 enter the courtroom.)

24 BY MR. EVANS: Your Honor, this witness still
25 needs to be sworn.

26 **BY THE COURT:** Raise your right hand, please,
27 sir.

28 **JACK MATTHEWS,**

29 a white male called to testify as a witness by the State of

1 Mississippi, having first been duly sworn, testified as
2 follows, to-wit:

3 DIRECT EXAMINATION BY MR. EVANS:

4 Q. Have a seat. State your name for the record,
5 please.

6 A. Jack Matthews.

7 Q. Mr. Matthews, how are you employed?

8 A. I'm an investigator with the Mississippi Highway
9 Patrol.

10 Q. And how long have you worked for the Mississippi
11 Highway Patrol?

12 A. About 25 years.

13 Q. I want to direct your attention back to around the
14 16th day of July of 1996, and ask you if you had an occasion
15 to be called to Winona, Mississippi, that day?

16 A. Yes, I did.

17 Q. Now in your capacity as an investigator for the
18 Highway Patrol, are there certain counties that you are
19 primarily responsible for?

20 A. I work out of the Greenwood District, and it
21 consists of ten counties.

22 Q. And is Montgomery County one of those counties?

23 A. Yes, it is.

24 Q. And for the record, Winona is located in Montgomery
25 County; is that correct?

26 A. Yes, sir.

27 Q. Approximately what size town is Winona?

28 A. It's about 7,000 people population wise.

29 Q. All right. For what reason were you called to

1 Winona that day?

2 A. We had received a call from the Winona Police
3 Department requesting assistance at Tardy Furniture Company
4 there on Front Street. They had called and advised that they
5 had some, they had found some bodies at that location and
6 requested assistance.

7 Q. Did you, in fact, go to Tardy Furniture that day?

8 A. Yes, sir. I did.

9 Q. What did you find when you arrived?

10 A. When I arrived, I was met by Chief Johnny Hargrove
11 out front, and we went into the furniture store. When we
12 went in, I noticed there had been an area in the store that
13 was roped off with police barricade tape. There were three
14 bodies inside the store. There was blood all over the
15 floor. It appeared to have been, the victims appeared to
16 have been killed by gunfire.

17 Q. All right, what at that point was done in an
18 attempt to get someone from the Crime Lab there?

19 A. I was notified by Chief Hargrove that the Crime Lab
20 had already been called and that they were on their way.

21 Q. Were you present during part of the time that
22 Melissa Schoene did her crime scene investigation?

23 A. Yes, I was.

24 Q. And did you see her obtaining the different
25 evidence that she has submitted here before the court?

26 A. Yes, sir. I did.

27 Q. At the time that this evidence was recovered, was
28 it known how many bullets were actually involved in the
29 store?

1 A. There was not, it was not a definite number. Of
2 course, sometimes we don't know that until the autopsies are
3 complete. But at that time we thought that we knew
4 approximately the number of bullets that had been fired
5 because we found some casings there at the scene.

6 Q. All right, I want to direct your attention
7 specifically to Bertha Tardy and where she was shot. At the
8 time at the scene did y'all know whether that was a through
9 and through wound or whether the bullet was still in her or
10 not?

11 A. We didn't know for sure.

12 Q. Okay, over in the area that she was, did you find
13 anything that appeared to be where a bullet had struck?

14 A. We noticed on the wall there was a nicked place on
15 the wall. There was a concrete wall there that had been
16 painted, and there was a nick in the wall. And we noticed
17 that, and it looked to be freshly nicked.

18 Q. Okay, I'm going to skip ahead at this point and
19 come back to try to keep this in some kind of order. I want
20 to hand you certain photographs. I will go through the
21 numbers with you. These aren't in order, but they are
22 Exhibits 37, 39, 40, 41, 35, 36, and the corresponding
23 slides. Would you examine these, please. Also 6 and 7.

24 A. (Photographs and slides handed to witness; pause
25 while witness examines exhibits.)

26 Q. Investigator Matthews, do those pictures truly and
27 accurately depict what you saw at the scene or what you saw
28 later at the scene when you returned to the scene?

29 A. Yes, sir.

1 Q. Now the ones when you returned to the scene-- first
2 let me go into what the purpose of that was. Why did y'all
3 go back to the crime scene?

4 A. After we reviewed the autopsy reports, we knew that
5 the projectile that passed through Ms. Tardy's head was
6 probably still in the store there somewhere. And after we
7 talked about it, we were reminded of this place on the wall
8 that the, the freshly nicked place there on the wall, and we
9 went back to see if we could locate that projectile.

10 Q. Were you able to locate that projectile?

11 A. Yes, we were.

12 Q. And how did you locate it?

13 A. We found it in a mattress where it appeared to have
14 ricocheted off of that wall and buried into the mattress.

15 Q. Were you present when that mattress was cut open
16 and the projectile recovered from it?

17 A. Yes, sir. I was.

18 BY MR. EVANS: Your Honor, I offer these
19 photographs into evidence at this time.

20 **BY THE COURT:** Any objection?

21 BY MR. LUMUMBA: Can I see them right quick?

22 (Pause while Mr. Lumumba looks at exhibits.)

23 BY MR. LUMUMBA: None other than the ones we
24 raised before trial in terms of.

25 **BY THE COURT:** Okay, let them be marked and
26 entered.

27 (PHOTOGRAPHS AND THE CORRESPONDING SLIDES
28 PREVIOUSLY MARKED AS STATE'S EXHIBITS S-6, S-7,
29 S-35, S-36, S-37, S-39, S-40, AND S-41 FOR

1 IDENTIFICATION WERE NOW ALL ADMITTED IN EVIDENCE.)

2 (Mr. Evans placed the newly introduced slide
3 exhibits in the projector.)

4 BY THE COURT: How about the lights?

5 BY MR. LUMUMBA: Can we approach for one
6 second?

7 BY MR. EVANS: Before I go forward with this?

8 BY MR. LUMUMBA: Yes.

9 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
10 THE JURY AS FOLLOWS:)

11 BY MR. LUMUMBA: I would enter an additional
12 objection at this point continuing to show these
13 bodies. This is not only prejudicial for the
14 reasons stated already, but it is also cumulative.
15 We are still showing bodies, still going through
16 this in a totally uncontested area. I don't know
17 what happened in the last trial, but we are not
18 contesting that the bullet went through her head
19 and scraped off the pole and all that kind of
20 stuff.

21 BY THE COURT: Nobody showed me the pictures.
22 I guess I didn't ask, but they are admitted. They
23 are into evidence now so--

24 BY MR. EVANS: Your Honor, the only ones that
25 we-- of course, they are in evidence, but the only
26 ones that we just introduced either show the
27 outside of the store or show the mattress where the
28 bullet was recovered.

29 BY THE COURT: Is that what you're getting

1 ready to show up here?

2 BY MR. EVANS: Yes, sir.

3 BY MR. LUMUMBA: Okay, no, they have got one
4 with her laying on the, laying in the store. That
5 is not one you are going to show?

6 BY MR. EVANS: Yeah, I'm going to show it, but
7 that is not one of the ones we have just
8 introduced. That one has been introduced.

9 BY MR. LUMUMBA: Yeah, well, what I am saying
10 is to continue to show it to the jury, I think it
11 is cumulative.

12 BY THE COURT: Is it the one of Ms. Tardy?

13 BY MR. EVANS: Yes, sir.

14 BY THE COURT: Okay. It is going to be
15 relevant for the purpose of showing where that
16 bullet was recovered. That is going to be the
17 necessity of that, so I'm allowing it for that
18 reason.

19 END BENCH CONFERENCE.

20 (Mr. Evans got slides ready to show.)

21 BY THE COURT: I can't see it good. Is it
22 showing up all right, or do you need--

23 BY MR. EVANS: If you would, cut the other
24 light off so they can see better. Let me step over
25 to the side too, Your Honor, because I believe I am
26 blocking part of the jurors.

27 CONTINUED DIRECT EXAMINATION BY MR. EVANS:

28 Q. Mr. Matthews, can you see this photograph?

29 A. Yes, sir.

1 Q. Can you tell us what it shows?

2 A. Okay, that is a nick in that brick wall there. It
3 appears, appeared to be on the 16th, appeared to be fresh.
4 And it is near the area where we found the body of Bertha
5 Tardy.

6 Q. Okay, I noticed a, what looks like a yard stick
7 right here. What is it in that picture for?

8 A. It just indicates where that, what we are
9 photographing.

10 Q. Now the dot here, is this the nick that appeared to
11 be where a bullet had struck the wall?

12 A. Yes, sir.

13 Q. And I notice an ink pen in the mattress here. What
14 does that indicate?

15 A. That indicates where the hole we found where the
16 bullet entered.

17 Q. And did someone in your presence cut that plastic
18 and the mattress open in an attempt to find the bullet?

19 A. Yes, sir. We did.

20 (Changes the slide.)

21 Q. What does this photograph show?

22 A. That's a picture of us cutting the mattress and
23 retrieving the projectile that we found there.

24 Q. Is this the projectile that was recovered?

25 A. Yes, sir.

26 (Changes slide.)

27 Q. And is this a close-up of the projectile that was
28 recovered?

29 A. Yes, sir.

1 Q. This is the same projectile that was sent to the
2 State Crime Lab?

3 A. Yes, sir. It was.

4 Q. All right, let me find a slide?

5 (Goes back through slides.)

6 Q. Okay, this is the slide I'm looking for. This
7 slide has been identified as this being the body of Ms.
8 Bertha Tardy; is that correct?

9 A. That's correct.

10 Q. And do you see the post that that bullet was
11 recovered from in that slide?

12 A. Yes, sir. It's that second post, the middle post.

13 Q. This post right here?

14 A. Yes, sir.

15 BY MR. EVANS: If you would, cut the lights on
16 for us, please, sir.

17 (The projector was turned off and the lights
18 back on.)

19 BY MR. EVANS:

20 Q. Mr. Matthews, back at the scene, did you have an
21 occasion yourself to see and pick up certain items that were
22 in the store?

23 A. Yes, sir. I did.

24 Q. I want to hand you Exhibit 62 and ask you if you
25 can tell us what this is. First, can you identify it?

26 A. That was a card that I found on Ms. Tardy's desk in
27 her office.

28 Q. Is that card in the same condition now as it was in
29 at the time you recovered it?

1 A. Yes, sir.

2 BY MR. EVANS: I offer this exhibit into
3 evidence, Your Honor.

4 BY MR. LUMUMBA: Can I see it please, Judge?

5 BY THE COURT: Sure. Then let me see it.

6 BY MR. EVANS: Yes, sir.

7 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
8 THE JURY AS FOLLOWS:)

9 BY MR. LUMUMBA: My objection is that it's not
10 authenticated as anything that has any relevance to
11 this case. We don't know what that is. It is like
12 picking up anything from any customer that might
13 have been in the store or any employee that might
14 have been in the store. I don't think that just
15 because their names might be mentioned in a public
16 store or a store which employs people, that that
17 means that they are admissible. I have a problem
18 with that. At this point there is no-- the
19 foundation for relevancy has not been laid, and
20 actually the authentication has not been laid. All
21 it is is an item found in the store. Anything
22 found in the store is not relevant. It has got to
23 have some way of proving a crime or proving a
24 connection to the crime. The fact that it was in
25 the store when he worked there; we all know that.
26 There is no dispute on that. It's not proof of a
27 crime.

28 BY THE COURT: What would it tend to prove?

29 BY MR. EVANS: It would tend to prove that he

1 worked at the store. It would tend to prove the
2 hours that he worked, and there it would be nothing
3 different from that--

4 **BY THE COURT:** --I think you are entitled to
5 show that he worked at the store, and there has not
6 been much proof on that at this point in time.

7 BY MR. LUMUMBA: Yeah, but that--

8 **BY THE COURT:** --It may not--

9 BY MR. LUMUMBA: --we don't even know who did
10 this.

11 BY MR. EVANS: It doesn't matter.

12 **BY THE COURT:** But here is the deal. It was
13 found at the store. They have established that.
14 All right, what the value of it, the weight and
15 worth of it is for the jury to decide, not me.

16 BY MR. LUMUMBA: But it has to be
17 authenticated.

18 **BY THE COURT:** It is relevant because it has
19 his name on it, and it apparently has some times on
20 there, so it has some relevance. It's not
21 prejudicial. I mean because to be honest with you,
22 it is really not even bringing up something that
23 y'all dispute in the long run. Y'all don't dispute
24 he worked there.

25 BY MR. LUMUMBA: No, we don't dispute that.

26 **BY THE COURT:** The fact is y'all don't even
27 dispute he worked there on those days.

28 BY MR. LUMUMBA: Judge, there is no
29 authentication of this document as being done by

1 anybody that would have had any power to write this
2 up in the store.

3 **BY THE COURT:** Well, the authenticity of-- not
4 the authenticity. The accuracy of what is on that
5 card may be disputed, but the fact that it was
6 there with his name on it with hours, with obvious
7 times of the day on there during a period he would
8 have worked would have some relevance, and I don't
9 see enough prejudicial effect to outweigh the
10 probative value. And therefore, I'm going to, I'm
11 going to allow it for whatever it is worth.

12 END BENCH CONFERENCE.

13 **BY MR. EVANS:** May I have this item marked
14 into evidence, Your Honor?

15 **BY THE COURT:** Yes.

16 (TIME CARD PREVIOUSLY MARKED AS STATE'S
17 EXHIBIT S-62 FOR IDENTIFICATION WAS NOW ADMITTED IN
18 EVIDENCE.)

19 **BY MR. EVANS:**

20 Q. What does that card purport to show, Mr. Matthews?

21 A. Okay. It has the name of Curtis Flowers written on
22 the top of it, and it appears to be days that he worked at
23 Tardy Furniture.

24 **BY MR. LUMUMBA:** I object to that, Judge.

25 **BY THE COURT:** Sustained. You can't testify
26 to that.

27 **BY MR. EVANS:** Your Honor, it is in evidence.
28 Can he not testify what is on it?

29 **BY THE COURT:** Yeah, but that is not on it.

1 BY MR. EVANS:

2 Q. Okay, read what is on the card.

3 A. Well, it has the date of Saturday, the 6/29 of
4 '96. It appears to be the time, 9:00 to 12:00; 1:00 to
5 5:20. Monday off. Tuesday, 9:00 to 11:30; 12:30 to 5:30.
6 Wednesday, 9:00 to 12:05. And then on the other side of the
7 card is "paid \$30.00 on 6/29." Then it has some more figures
8 with the sum total of 17.55 or 17 and 11/12ths hours.

9 Q. Just lay it in front of you, if you would, for
10 now. Mr. Matthews, at this point-- well, first let me do
11 this. I will hand you Exhibit 75 and ask you if you can
12 identify this exhibit?

13 A. This was a projectile that we recovered from the
14 mattress at Tardy Furniture Company.

15 Q. The same projectile that you have described and
16 that the ladies and gentlemen of the jury saw in the slides?

17 A. Yes, sir. That's correct.

18 BY MR. EVANS: I offer Exhibit 75 into
19 evidence, Your Honor.

20 BY MR. LUMUMBA: We have no objection to
21 Exhibit 75.

22 BY THE COURT: All right, sir. Let it be
23 marked and admitted.

24 (SMALL WHITE BOX CONTAINING PROJECTILE FROM
25 MATTRESS PREVIOUSLY MARKED AS STATE'S EXHIBIT S-75
26 FOR IDENTIFICATION WAS NOW ADMITTED IN EVIDENCE.)

27 BY MR. EVANS:

28 Q. Mr. Matthews, on the date of the murders, did you
29 have an occasion to talk to a person by the name of Curtis

1 Flowers?

2 A. Yes, I did.

3 Q. Where did you talk to him?

4 A. I talked to him at the Winona Police Department.

5 Q. And approximately what time of day did you first
6 see him?

7 A. About 1:30.

8 Q. All right.

9 BY MR. LUMUMBA: Judge, we had already--

10 BY THE COURT: This is your motion.

11 BY MR. LUMUMBA: Okay.

12 BY THE COURT: Okay. Ladies and gentlemen,
13 this is a matter I have to hear outside y'all's
14 presence. You will need to go to the jury room.

15 JURY LEAVES THE COURTROOM.

16 BY THE COURT: State your objection for the
17 record, Mr. Lumumba, if you will.

18 BY MR. LUMUMBA: Okay, my problem was that we
19 have raised a Motion to Suppress statements that
20 they allegedly took from the Defendant, and we
21 were, the Court indicated that we would have a
22 hearing. So that is what I would like to have is
23 a, an admissibility hearing.

24 BY THE COURT: Okay, and you filed a written
25 Motion to Suppress, and that written Motion to
26 Suppress based on the illegality of the arrest; is
27 that correct, or if there was an arrest, that it
28 was illegal?

29 BY MR. LUMUMBA: Right. Right.

1 BY THE COURT: Did I misstate that?

2 BY MR. EVANS: I can't even remember what the
3 grounds of the Motion were.

4 BY MR. LUMUMBA: It was the arrest for sure.

5 BY THE COURT: Well, isn't there a debate as
6 to whether there was an arrest when this took
7 place?

8 BY MR. EVANS: Yes, sir. Right.

9 BY MR. LUMUMBA: Right.

10 BY THE COURT: Okay, that's what I am saying.
11 If there was an arrest, you say it was illegal.

12 BY MR. LUMUMBA: Right.

13 BY MR. EVANS: May I proceed, Your Honor?

14 BY THE COURT: Yes.

15 JACK MATTHEWS,

16 a white male previously called to testify as a witness by the
17 State and having been previously sworn, now testified on
18 behalf of the State on Defendant's Motion to Suppress with
19 the JURY OUT as follows, to-wit:

20 DIRECT EXAMINATION BY MR. EVANS ON MOTION TO SUPPRESS: JURY
21 OUT.

22 Q. Mr. Matthews, at the time that you talked to Curtis
23 Flowers, was he under arrest?

24 A. No, sir. He was not.

25 Q. Was he free to leave?

26 A. Yes, sir; he was.

27 Q. Did he, in fact, leave after you interviewed him?

28 A. Yes, he did.

29 Q. Now at the time that you talked to him, did you, in

1 fact, advise him of what is commonly called his Miranda
2 rights?

3 A. Yes, sir. He was brought to the Winona Police
4 Department at our request. He came voluntarily, but because
5 he was at the police department, we told him that we were
6 going to read him his rights and that we wanted to talk to
7 him about his employment at Tardy Furniture Company.

8 Q. I will hand you Exhibit 67 and ask you if you can
9 identify this, please.

10 A. That is his warning and his waiver of rights that
11 we gave to him on the 16th of July. This waiver was signed
12 at 1:30.

13 Q. At the time he was asked to come to the police
14 department, was he even considered a suspect?

15 A. We knew that, we had had information that he had
16 been employed at Tardy Furniture Company and had been
17 recently let go, and we wanted to talk to him about that.

18 Q. But he was not under arrest and was not even
19 officially considered a suspect at that time; is that
20 correct?

21 A. No, sir, not at that time.

22 Q. The rights form that is in front of you, is that
23 the same rights form that you used to advise the Defendant of
24 his rights?

25 A. Yes, it is.

26 Q. And who was present when you advised him of those
27 rights?

28 A. I was present and John Johnson.

29 Q. Is that form in the same condition now as it was in

1 at the time you advised him and as y'all-- other than the
2 fact that it now has y'all's signatures to it?

3 A. Yes, sir.

4 BY MR. EVANS: I offer this form into
5 evidence, Your Honor.

6 **BY THE COURT:** Any objection to that?

7 BY MR. LUMUMBA: No, sir.

8 **BY THE COURT:** Let it be marked into
9 evidence.

10 (WARNING AND WAIVER OF RIGHTS SIGNED ON
11 7/16/96 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-67
12 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

13 BY MR. EVANS:

14 Q. Mr. Matthews, did you, in fact, advise the
15 Defendant of the rights that are contained on that form?

16 A. Yes, I did.

17 Q. Did he appear to understand those rights?

18 A. Yes, he did.

19 Q. Did you use any pressure or any type of coercion to
20 get him to talk to you?

21 A. No, sir. I did not.

22 Q. Did you make any force or use any threat of force
23 to get him to cooperate with you?

24 A. No, sir.

25 Q. Did it appear to you that he understood that he was
26 free to go and that he had a right to talk to you if he would
27 like to, but he didn't have to talk to you?

28 A. That's correct.

29 Q. Once he had signed that form stating that he wished

1 to waive his rights and talk to you, did he, in fact, talk to
2 you?

3 A. Yes, he did.

4 Q. Did he, in fact, make a verbal statement to you
5 that day?

6 A. Yes, he did.

7 Q. And did he on another day come up there on his own
8 and make another statement?

9 A. Yes, sir; he did.

10 BY MR. EVANS: Tender the witness.

11 CROSS-EXAMINATION BY MR. LUMUMBA: JURY OUT.

12 Q. Mr. Matthews, my understanding is that Mr. Curtis
13 Flowers was taken into the, or that he was, you saw him-- did
14 you go to his home, or did you see him somewhere else that
15 day on the 16th?

16 A. The first time I saw Mr. Flowers was at the Winona
17 Police Department.

18 Q. Okay. So he was at the police department; is that
19 correct?

20 A. I was already there when he came.

21 Q. Okay, and did some officers come with him?

22 A. I believe that's correct.

23 Q. In fact, the highway patrolman by the name of
24 Dennis Woods and Officer Townsend were with him. Is that
25 true?

26 A. I know Mr. Woods was with him. I don't know about
27 the other officer.

28 Q. So you don't know what Mr. Woods and Mr. Townsend
29 told him prior to him coming, do you?

1 A. (No audible response.)

2 Q. Do you know what Mr. Woods and Mr. Townsend told
3 him?

4 A. No, sir.

5 Q. But they are the ones that escorted him to the
6 police department?

7 A. Yes, sir. I know what he told me but-- I mean I
8 know what Officer Woods told me but.

9 Q. All right, but you don't know what he told Mr.--

10 A. No, sir.

11 Q. Mr. Flowers; is that correct?

12 A. That's correct.

13 Q. Okay. Now let me ask you this. So you really
14 don't know what he was told that caused him to leave his home
15 with them; is that true?

16 A. (No response.)

17 Q. You don't know what he was told to cause him to
18 leave his home with them?

19 A. I know that they asked him to come up to the police
20 department.

21 Q. Well, you don't--

22 A. --I know that part.

23 Q. You weren't there, so you don't know.

24 A. Well, that is true.

25 Q. Okay. So but you do know that they came in, and he
26 didn't come in by himself. He came in with two officers;
27 isn't that true?

28 A. I know they drove him up there; yes, sir.

29 Q. And now as far as the facts that you had under your

1 disposal at this time, this was on July the 16th, 1996. Is
2 that true?

3 A. That's true.

4 Q. At that time you had not gathered any kind of
5 physical evidence which in any way pointed to Mr. Flowers,
6 had you?

7 A. No, sir.

8 Q. It would be safe to say that you didn't have any
9 witnesses who were saying that Mr. Flowers was involved;
10 isn't that true?

11 A. Not at that time, no, sir.

12 Q. And in fact, that never changed. You never did get
13 a witness that said that they saw Mr. Flowers in the store
14 doing anything on that day, did you?

15 A. That's correct.

16 Q. Now in fact, you never did get a witness that said
17 that they saw Mr. Flowers--

18 BY MR. EVANS: --Your Honor, that is not
19 relevant to this motion.

20 BY MR. LUMUMBA: I think it is.

21 BY THE COURT: State your question again.

22 BY MR. LUMUMBA: Maybe a word of explanation
23 might help him. Me and the counsel were talking,
24 and we thought that maybe we would deal with -- I
25 think they may tend to-- they may want to introduce
26 more than just one statement, and maybe if we can
27 cover all the statements--

28 BY THE COURT: Yeah, if we are into more than
29 one statement, I want to cover them all with this

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 motion at one time.

2 BY MR. EVANS: That is still-- that is fine,
3 Your Honor. That's what I thought we were doing.

4 BY MR. LUMUMBA: Okay, well, that is why my
5 question is the way it is.

6 BY THE COURT: Okay, I did not understand your
7 question. Restate it.

8 BY MR. LUMUMBA:

9 Q. My question is at this time, first of all which
10 would have been the 16th, you didn't actually have any
11 witness who said that they actually saw Mr., Mr. Flowers
12 doing anything wrong anywhere, either in Tardy's or anywhere
13 else, did you?

14 A. No, sir.

15 Q. And you never did come up with a witness that
16 actually said that they saw Mr. Flowers doing anything wrong
17 in Tardy's or anywhere else, did you?

18 A. No, sir.

19 Q. Now and you never came up with any physical
20 evidence that, like fingerprints or anything which positively
21 placed him in the store. Isn't that true?

22 A. No, sir.

23 Q. Now let me ask you this. At the time that you--
24 you didn't even have a shoe box at the time that you sat down
25 with him on the 16th; is that correct?

26 A. I didn't understand that question.

27 Q. On the 16th of July, you didn't even have a shoe
28 box; is that correct? You hadn't taken any shoe boxes from
29 his home, had you?

1 A. No, sir.

2 Q. Okay, and you hadn't taken any, any other kind of
3 evidence from his home at that point?

4 A. The first time I saw Mr. Flowers that day was at
5 the Winona Police Department. I never did go to his home.

6 Q. Okay. When I said you, I'm talking about as far as
7 to your knowledge, the police hadn't taken anything to his
8 home at least -- no police agency had taken anything from his
9 home which they had brought to your attention?

10 A. On the 16th I wasn't aware that anybody had been to
11 his home.

12 Q. Well, you knew somebody went to his home to talk to
13 him to bring him up there; isn't that correct?

14 A. I don't think they located him at his home.

15 Q. Okay. Okay, now let me ask you this. So you
16 pretty much told us what you had or basically what you didn't
17 have on the 16th. Now by the way, did you do anything to
18 record electronically the advice of rights on the 16th?

19 A. No, sir.

20 Q. Did you do anything to record anything he told you
21 on that date?

22 A. No, sir.

23 Q. At the time that he was there, was he the only
24 person that was there, or were there other people who were
25 being taken in as suspects?

26 BY MR. EVANS: Your Honor, I object. He said
27 he was not taken in as a suspect, and that is an
28 improper statement.

29 BY THE COURT: Well, the jury is not here. Go

1 ahead.

2 BY MR. LUMUMBA: Right.

3 BY MR. LUMUMBA:

4 Q. Were there other people there?

5 A. There were-- Mr. Johnson was there, and I was
6 there, and Mr. Flowers was there. There were some other
7 people in the police department there.

8 Q. Was Mr. Doyle Simpson there?

9 A. I don't know that he was there at that time.

10 Q. Did he get there before Mr. Flowers left?

11 A. We talked to him some time, and I'm not sure as to
12 the sequence of when he got there as compared to when we
13 talked to Mr. Flowers.

14 Q. At that moment in time he didn't say anything to
15 you which suggested that Mr. Flowers had done anything
16 illegal; isn't that right?

17 A. Who are you referring to?

18 Q. Doyle Simpson.

19 A. No, sir.

20 Q. And they could have been there at the same time is
21 what you are telling me; is that correct?

22 A. It's a possibility they could have been in the
23 building; yes, sir.

24 Q. Okay, now that was the first date. Now when is the
25 second date that you-- did you do anything to record what
26 your conversation or your interview or interrogation with Mr.
27 Flowers included? Did you do anything to record that on the
28 16th?

29 A. On the 16th?

1 Q. Yeah.

2 A. No.

3 Q. Did you do-- you didn't write it down or anything?

4 A. No, sir.

5 Q. Now on the next day that you were present that he
6 actually was interviewed or interrogated, what day was that?

7 A. The next time I talked to Mr. Flowers was on July
8 the 18th.

9 Q. And were you the only one that was talking to him?

10 A. No, sir. Myself and DA Investigator, John Johnson,
11 and the MHP Investigator, H. W. Miller.

12 Q. About what time was that?

13 A. I don't remember the exact time.

14 Q. And do you know at that moment in time on the 18th,
15 would it be safe to say that you didn't have any other
16 physical evidence that you didn't have, that you hadn't --
17 you didn't have any more physical evidence than you did on
18 the 16th. Isn't that true?

19 A. We had done some investigating, and we had talked
20 to some people, and we wanted to talk to Curtis again, and at
21 that time we recorded his statement.

22 Q. Okay, well, let me ask you this. First of all, I
23 don't think that, and I'm not complaining but I would just
24 like to get it. That is interesting to know also, but had
25 you any other physical evidence other than what you had on--
26 you already stated you didn't have any physical evidence that
27 implicated him on the 16th. You have already said that;
28 right?

29 A. Yes, sir.

1 Q. Did you have any physical evidence that implicated
2 him on the 18th? That was my question.

3 A. No, sir. We didn't have any physical evidence.

4 Q. Now how did he get to the station on the 18th?

5 A. I'm not sure.

6 Q. You didn't bring him?

7 A. I didn't bring him myself; no, sir.

8 Q. And was he advised of any rights on the 18th?

9 A. Yes, sir. We advised him of his rights.

10 Q. And you have that in writing?

11 A. Yes, sir.

12 Q. And let me ask you this. On the 16th when he was
13 advised of his rights, did he sign that?

14 A. Yes, sir.

15 Q. Okay, can I see it, please?

16 A. Yes, sir.

17 Q. Now you said that on the 16th that he was supposed
18 to be free to leave. That's what you said; right? You just
19 testified to that?

20 A. Yes, sir.

21 Q. Okay, well, let me ask you this.

22 A. He did leave when we got through talking.

23 Q. He left when you got finished talking; right?

24 A. Yes.

25 Q. Which does not necessarily mean that he would have
26 been free to leave before you talked; right?

27 A. He was free to leave at any time.

28 Q. But the fact that he left when you got finished
29 talking and a person leaves when you get finished talking

1 does not mean that you haven't told them that they have to
2 stay until you talk, does it?

3 A. I never told him that.

4 Q. Well, do you understand my question?

5 A. No, sir.

6 Q. Well, leaving at the end of the conversation does
7 not prove that he was free to leave at the beginning of the
8 conversation, does it? In and of itself?

9 A. I don't follow that.

10 Q. Okay. You didn't record what you were telling him,
11 did you? Did you record anything that you said to him that
12 day?

13 A. When?

14 Q. On the 16th. That's the day we have just been
15 talking about.

16 A. No, sir. I told, I answered that while ago. I
17 didn't, we didn't tape record anything, and we didn't record
18 anything. I didn't.

19 Q. When he walked in the door, you didn't say, "You
20 are free to leave," did you?

21 A. No, sir. I didn't say that.

22 Q. And you don't know of your own knowledge what the
23 other officers had told him. So you didn't tell him he was
24 free to leave; isn't that correct?

25 A. I know no officer in the room that was there said
26 anything, made that statement.

27 Q. But you were in-- no officer who was in the room
28 made the statement, "You are free to leave." That's true;
29 right?

1 A. We told him, we read him his rights, and it says in
2 here that, you know.

3 Q. In the rights?

4 A. That he could, that the rights form, that he could
5 stop talking at any time.

6 Q. The rights form doesn't say, You are free to leave,
7 does it?

8 A. No, sir. It doesn't say that, but it says you can
9 stop talking at any time.

10 Q. And in fact, the rights forms are usually read to
11 people who are suspects; right?

12 A. Well, we made it clear that he was there
13 voluntarily, that we wanted to talk to him and what we wanted
14 to talk to him about.

15 Q. All right, did you tell him he was free to leave?
16 That's what I'm trying to get to, this voluntarily stuff?

17 A. We told him that he was, that we would like to talk
18 to him. We would like to talk to him about his employment at
19 Tardy Furniture, and if he would agree to talk with us, and
20 he voluntarily agreed to talk with us.

21 Q. Right. And that is all he voluntarily agreed to
22 do, right, is to talk to you; right?

23 A. He talked to us; yes, sir.

24 Q. Right. And so you tell people who are there and
25 locked up and who can't leave, you read them the same rights
26 form, don't you?

27 A. That's correct.

28 Q. And it says the same thing about they can
29 voluntarily stop talking to you?

1 A. At any time they want.

2 Q. So it's nothing in the rights form that tells him
3 he is free to leave and not under arrest? That is nothing in
4 there that says that; right?

5 A. We told him in the beginning he was not under
6 arrest.

7 Q. Okay. Oh, you said that, did you?

8 A. Yes, sir.

9 Q. Okay, who said that?

10 A. I said it.

11 Q. You said, "You are not under arrest"?

12 A. Yes, sir.

13 Q. Okay. And you said, but you didn't say you were
14 free to leave?

15 A. I don't remember that I said that.

16 Q. Well, when he came into the door, how did you
17 confront him? Did you say anything to him or approach him or
18 greet him in any way?

19 A. I introduced myself to him.

20 Q. Did anybody else there introduce themselves?

21 A. Mr. Johnson.

22 Q. Okay, how many of them-- there was three. I think
23 you have already said it was three of them; is that right?

24 A. I know Mr. Johnson and I were there on the 16th.

25 Q. Okay. But you didn't greet him in any kind of way
26 other than just say hello?

27 A. I just, I introduced myself to him. I told him
28 who I was, and I told him why, you know, that I wanted to
29 talk with him, and I asked him if he would agree to talk with

1 us.

2 Q. Now normally when you-- did you make him at home to
3 the extent that you shook his hand?

4 A. No, sir. I did not shake his hand.

5 Q. And Mr. Johnson didn't shake his hand?

6 A. Not that I know of.

7 Q. Okay, so you didn't greet him? You didn't make him
8 feel that welcome, did you?

9 A. Well, no.

10 Q. Okay, and would it be safe to say that the others
11 didn't, or you didn't see that either?

12 A. I didn't see anybody shake hands with him; no, sir.

13 Q. Okay, and you don't know whether or not the other
14 people let him know that they weren't arresting him, Mr.
15 Townsend and Mr. Woods. You don't know that they shook--

16 A. --I don't know; no, sir.

17 Q. That wouldn't be unusual to shake a person's hand
18 that you are getting ready to interview, would it?

19 BY MR. EVANS: Your Honor, that is not
20 relevant to what we are here on.

21 BY THE COURT: Well, you have established that
22 point. Let's move on.

23 BY MR. LUMUMBA: Okay.

24 BY MR. LUMUMBA:

25 Q. Now let me ask you this. So in any event, you were
26 in the police station?

27 A. Sir?

28 Q. You were in the police station?

29 A. Yes, sir.

1 us.

2 Q. Now normally when you-- did you make him at home to
3 the extent that you shook his hand?

4 A. No, sir. I did not shake his hand.

5 Q. And Mr. Johnson didn't shake his hand?

6 A. Not that I know of.

7 Q. Okay, so you didn't greet him? You didn't make him
8 feel that welcome, did you?

9 A. Well, no.

10 Q. Okay, and would it be safe to say that the others
11 didn't, or you didn't see that either?

12 A. I didn't see anybody shake hands with him; no, sir.

13 Q. Okay, and you don't know whether or not the other
14 people let him know that they weren't arresting him. Mr.
15 Townsend and Mr. Woods, you don't know that they shook--

16 A. --I don't know, sir.

17 Q. That wouldn't be unusual to shake a person's hand
18 that you are getting ready to interview--

19 BY MR. EVANS: --Your Honor, that is not
20 relevant to what we are here on.

21 BY THE COURT: Well, you have established that
22 point. Let's move on.

23 BY MR. LUMUMBA: Okay.

24 BY MR. LUMUMBA:

25 Q. Now let me ask you this. So in any event, you were
26 in the police station?

27 A. Sir?

28 Q. You were in the police station?

29 A. Yes, sir.

1 Q. What room were you in in the police station?

2 A. They have a room there that DA investigators
3 occupy, and that's the room we were in.

4 Q. About how big is that room?

5 A. Probably, maybe 15 by 15, I would say.

6 Q. Okay.

7 A. Approximately.

8 Q. And he didn't have anybody in there with him other
9 than, that was not a police officer?

10 A. There was Mr. Johnson, myself and Mr. Flowers.

11 Q. On the 18th -- did you talk to him on the 17th
12 also?

13 A. No, sir. I didn't talk to him.

14 Q. Were you advised as to whether or not he had been
15 talked to on the 17th?

16 A. No, sir. I don't know that he had been talked to.

17 Q. On the 17th where did you interview him at?

18 A. I didn't interview him on the 17th.

19 Q. On the 18th where did you interview him at?

20 A. In the same place.

21 Q. Same room?

22 A. Same room.

23 Q. Same people?

24 A. Same people. Officer Miller was there that day
25 also.

26 Q. You interviewed him again on the 23rd; is that
27 correct?

28 A. No, sir. I didn't interview him on the 23rd.

29 Q. Okay. Did anybody interview him on the 23rd in

1 your presence?

2 A. No, sir.

3 Q. On the 23rd-- do you recognize this document here?
4 It has your name on it?

5 A. (Pause while witness looks at document.) This is on
6 the 16th.

7 Q. I am just asking you do you recognize the document?
8 It has your name on it.

9 A. It's the first time I have seen it.

10 Q. Okay, so you don't, you also don't recognize then
11 this page here which says July 23rd at 12:12 hours at the
12 Winona Police Department? The Defendant was given his
13 Miranda warnings which were signed at 12:15, and he further
14 signed the rights form at 12:15. The waiver was witnessed by
15 Jack Matthews. Are you Jack Matthews?

16 A. I am Jack Matthews.

17 Q. So you don't know anything about being on the 23rd,
18 witnessing that?

19 A. I don't know what this document is. It's the first
20 time I have seen it.

21 Q. Okay, so if there is a waiver form signed on the
22 23rd, you don't know anything about it; is that right?

23 A. No, sir.

24 Q. And you didn't see him on the 23rd to the best of
25 your knowledge?

26 A. I might have, but I don't remember if I did.

27 BY MR. HORAN: Mr. Lumumba, can I see the
28 document?

29 (Document handed to State's Counsel.

1 Defendant's Counsel confer briefly.)

2 BY MR. LUMUMBA:

3 Q. On the 16th, do you recall who supplied the
4 instrument in which he signed the rights waiver form with? A
5 pen or a pencil or whatever it was. Was it a pen or pencil,
6 or do you know?

7 A. It appears to be a pen. I'm not, I don't know who
8 supplied it.

9 Q. You do have pens at the station for that purpose?

10 A. I am sure they do.

11 Q. So how long did you spend with him on the 16th
12 before you, before he left that building?

13 A. We were there probably somewhere in the
14 neighborhood of thirty minutes.

15 Q. How much time was he in that room on the 18th?

16 A. Probably about the same amount of time, maybe a
17 little bit longer.

18 Q. Was he taken anywhere else by you or by anybody
19 else on the 18th other than the police station?

20 A. Seems like on the 18th we gave him a ride back to
21 his house.

22 Q. There was a guy by the name of Robert who conducted
23 some kind-- Jennings who conducted some kind of exam on the
24 18th; is that correct?

25 A. Yes, possibly so, yeah.

26 Q. Pardon?

27 A. I think so; yes, sir.

28 Q. Did you take him to that Robert, or did Robert come
29 to him?

1 A. He was there at the police department.

2 Q. And who is he?

3 A. He is an investigator with the DA's office.

4 Q. Did you talk to Mr.-- did you talk to Mr. Flowers
5 on any other days other than the days that we have talked
6 about to this extent, to this point?

7 A. I talked to him on the 16th and on the 18th.

8 Q. Any other days?

9 A. Possibly I did, but I don't recall.

10 Q. And on neither one of those days are you the one
11 that actually escorted him or carried him into the station;
12 is that true? On neither of those days did you actually
13 bring him to the station?

14 A. No, sir.

15 Q. And on neither of those days do you have any
16 personal knowledge as to whether or not the person who
17 brought him to the station, you don't know what they said of
18 your personal knowledge?

19 A. I was not there with them; no, sir.

20 (Defense Counsel confer briefly.)

21 Q. Okay, a final question at this time, when he came
22 in on the 16th, did you have any gloves on?

23 A. On the 16th?

24 BY MR. EVANS: Your Honor, that hasn't got
25 anything to do with what this motion is about.

26 BY THE COURT: No, it's not. You can get into
27 that later. I know where you are going with it.

28 BY MR. LUMUMBA:

29 Q. Did you have any, did you have a weapon?

1 BY MR. EVANS: That also has nothing--

2 BY MR. LUMUMBA: --Well, that does have
3 something to do with it because it has something to
4 do with whether--

5 BY THE COURT: --That could be. I will allow
6 that.

7 BY MR. LUMUMBA:

8 Q. Did you have a weapon?

9 A. Was I wearing a weapon?

10 Q. Yes. Did you have a weapon in your possession on
11 the 16th?

12 A. No, I did not.

13 Q. Okay, where was it at?

14 A. In my vehicle.

15 Q. And had you at any point in time had that weapon in
16 his presence?

17 A. No, sir.

18 Q. How long had it been in your vehicle?

19 A. Years.

20 Q. I'm talking about that day. You don't ever carry a
21 weapon on your person?

22 A. Sometimes. I didn't that day.

23 Q. Okay. And do you know whether Mr. Johnson had a
24 weapon?

25 A. I don't know.

26 Q. And do you know whether Mr. Miller had a weapon?

27 A. I don't know either.

28 Q. He was there though; right, at some point in time?

29 A. He was there on the 16th, but I don't think he was

1 at the interview that we conducted that day with Mr.
2 Flowers. I think he was in the area or may have been in the
3 police department.

4 BY MR. LUMUMBA: I don't have any other
5 questions of this officer at this time.

6 REDIRECT EXAMINATION BY MR. EVANS: JURY OUT.

7 Q. Mr. Matthews, you did, in fact, advise the
8 Defendant before you started that he was not under arrest; is
9 that correct?

10 A. That's correct.

11 Q. And in fact, he did leave at the end of that
12 interview?

13 A. That's correct.

14 Q. He came back to the police department several times
15 on his own, did he not?

16 A. Yes, he did.

17 Q. And in those times, sometimes y'all talked to him--
18 and Your Honor, for the record I want to make sure the record
19 is clear that the jury is not present. One of those times he
20 came in--

21 BY MR. LUMUMBA: Excuse me. Can we get a
22 question instead of leading questions, please?

23 BY THE COURT: The jury is not in here. I
24 want to hear what is going on. Go ahead.

25 BY MR. EVANS: Thank you, Your Honor.

26 BY MR. EVANS:

27 Q. One of those times he even voluntarily came up
28 there on his own and submitted to a polygraph test, did he
29 not?

1 A. That's correct.

2 Q. And these occasions he knew and none of these
3 occasions he was under arrest; is that right?

4 A. That's correct.

5 Q. And on all these occasions he was free to go after
6 that was over?

7 A. That's correct.

8 Q. And it was approximately a year later before he was
9 arrested?

10 A. Yes, sir.

11 BY MR. EVANS: Your Honor, at this point...

12 (Pause while State's Counsel confer.)

13 Q. Just to make sure that the record is clear and that
14 the Judge knows what is going on, the 23rd-- wait, let me get
15 this other document too so you can look at it.

16 BY MR. EVANS: May I have this item marked for
17 identification, Your Honor?

18 BY THE COURT: Yes.

19 (CONSENT FOR POLYGRAPH TEST WAS MARKED AS
20 STATE'S EXHIBIT S-106 FOR IDENTIFICATION. NOTE:
21 JURY IS STILL OUT.)

22 (Exhibit S-106 shown to Mr. Lumumba.)

23 BY MR. EVANS:

24 Q. I show you Exhibit 106 and Exhibit 66. And I will
25 just ask you if the 23rd is, in fact, the day he voluntarily
26 came in and took the polygraph test?

27 A. Yes, sir. I was under the mistake that he had
28 taken it on the 18th, but it was the 23rd.

29 Q. And the 18th was the day that he came back in on

1 his own, and you took the taped statement; is that correct?

2 A. That's correct. Yes, sir.

3 Q. And actually in neither the initial interview that
4 you just interviewed him or the statement did he incriminate
5 himself, did he?

6 A. No, sir. He did not.

7 BY MR. EVANS: That's all, Your Honor.

8 TESTIMONY ON BEHALF OF THE STATE ON MOTION WAS
9 CONCLUDED, BUT WITNESS REMAINED ON THE STAND.

10 BY THE COURT: Do you have any other witnesses
11 on this point?

12 BY MR. LUMUMBA: Yes.

13 BY THE COURT: Well, I am asking him.

14 BY MR. EVANS: Not at this point. We would
15 like for him to proceed at this point, and we
16 will--

17 BY THE COURT: Well, I hold that the State has
18 established a prima facie case to this point. Do
19 you have any witnesses on this?

20 BY MR. LUMUMBA: Yeah, I have one at this
21 time. Let me ask you; these two officers who the
22 officer claims transported him to the station, they
23 are not here right now, are they?

24 BY MR. EVANS: No.

25 BY MR. LUMUMBA: Okay. Yeah, we do have a
26 witness on this point, but I also want to submit an
27 exhibit. Do you have the-- I know it's an exhibit
28 in evidence here already, I believe. It's the test
29 - what do you call it? - residue test done.

1 **BY THE COURT:** It is there. I remember him
2 having it on the--

3 BY MR. EVANS: --Gunshot residue?

4 **BY THE COURT:** Yeah.

5 BY MR. LUMUMBA: Yeah, where is that?

6 BY MR. EVANS: It's right here.

7 BY MR. LUMUMBA: Okay, is this it? I believe
8 there is a document that comes with this that is
9 signed by the Defendant. Do we have that?

10 BY MR. HORAN: It may be inside.

11 BY MR. LUMUMBA: May be inside?

12 (Pause while Mr. Lumumba examines Exhibit
13 S-86.)

14 BY MR. LUMUMBA: Judge, I would recall Mr.
15 Matthews in my case to start off with on this issue
16 and just ask him a couple of questions.

17 **BY THE COURT:** Yeah, but we are on the
18 statement now. We are not on the--

19 BY MR. LUMUMBA: No, this is just the
20 statement. This is the statement. And it's
21 definitely, this has to do with the statement of
22 whether he was-- can I ask the questions?

23 **BY THE COURT:** Sure.

24 **JACK MATTHEWS,**
25 a white male again called to testify, this time on behalf of
26 the Defendant on his Motion to Suppress, having been
27 previously sworn, testified further with the JURY OUT as
28 follows, to-wit:

29 DIRECT EXAMINATION BY MR. LUMUMBA:

1 Q. You indicated that Mr., Mr. Flowers was not a
2 suspect on that day; is that correct?

3 A. No, he was not on that day.

4 Q. Okay. Now let me see. I'm going to show you a
5 document which is actually marked. I don't think we have to
6 have it remarked. It is part of Exhibit S-86, and ask you
7 what date that was?

8 A. That is on the 16th.

9 Q. Who is that signed by?

10 A. That is signed by me.

11 Q. Okay, and I want to refer you to this line here in
12 this document, and what that is is an official document about
13 the gunshot residue test, but it was taken on that same day?

14 A. That's correct.

15 Q. Okay. And you indicated he left and he wasn't a
16 suspect; right?

17 A. (No response.)

18 Q. I am asking you what you indicated before. You
19 just told me he wasn't a suspect?

20 A. Yes, sir. He was not a suspect.

21 Q. Right here it says, "Suspect was at his residence
22 prior to questioning. Activities unknown." Isn't that what
23 it says?

24 A. That's correct.

25 Q. And the suspect you were talking about, isn't that
26 the same as Curtis Flowers?

27 A. Yes, sir.

28 Q. And then right up here it says, "Suspect is living"
29 or I guess this is supposed to be living or dead, but you

1 checked "living"; is that correct?

2 A. Yes, sir.

3 Q. "Suspect is right handed." Is that correct?

4 A. That's correct.

5 Q. Now the thing where it says suspect up here, it
6 also says "Suspect's full name." And whose name did you put
7 in there?

8 A. Curtis Flowers. This is the only form that comes
9 with this evidence kit, and this is the only thing that we
10 have to go by to--

11 Q. --Okay, well, you know more, you know how to use
12 more words than "suspect." You could say Flowers. You know
13 how to write "Flowers" as opposed to "suspect" yourself;
14 right? You know how to do that?

15 A. I just filled in the blanks on the form; yes, sir.

16 Q. Well, yes, but you wrote the word "suspect," didn't
17 you?

18 A. Yes, sir.

19 Q. There is nothing about the form that requires you
20 to write the word "suspect" here, does it?

21 A. Well, it asks for suspect information. So.

22 Q. But if he wasn't a suspect, you certainly could
23 have just said Flowers; is that right?

24 A. I guess I could have.

25 Q. Did you?

26 A. No, sir. I believe I wrote "suspect," didn't I?

27 Q. Okay. And if he was not a suspect, there is
28 nothing also that required you to use this form; isn't that
29 correct?

1 A. Well, I had to use that form. It's the only form
2 we have for gunshot residue.

3 BY MR. LUMUMBA: Is this in evidence?

4 BY MR. HORAN: Look at the tag.

5 BY THE COURT: I don't think it is.

6 BY MR. LUMUMBA: For purposes--

7 BY THE COURT: --The fact is I know it's not.

8 BY MR. LUMUMBA: For purposes of this hearing,
9 I would move for its evidence admission, just for
10 purposes of this hearing.

11 BY MR. EVANS: No objection.

12 BY THE COURT: Okay.

13 BY MR. EVANS: We can go ahead, if you don't
14 have any objection, we can go ahead and just mark
15 the whole thing into evidence anyway.

16 BY MR. LUMUMBA: Well, I do have--

17 BY THE COURT: --He is going to have another
18 objection to that.

19 BY MR. LUMUMBA: I will have an objection to
20 that, okay. Okay, so I have--

21 BY THE COURT: --Wait a minute. Let's mark it
22 as evidence for this hearing. Did you do that?

23 BY THE COURT REPORTER: Put another sticker on
24 it?

25 BY THE COURT: It needs a sticker showing it
26 has been marked as an exhibit to this hearing as an
27 exhibit on the Motion to Suppress.

28 BY THE COURT REPORTER: Give it a new number?

29 BY THE COURT: Well, your sticker should read

1 that it is a D-1 on the Motion to Suppress would be
2 my idea how it ought to be.

3 BY MR. EVANS: It might be a little simpler,
4 Your Honor, if she would just put this sticker on
5 the form he is talking about instead of the
6 package. That way we won't have a different
7 sticker on the package.

8 BY MR. LUMUMBA: That would be okay. It
9 doesn't really matter to me, Judge. I don't have
10 any problem.

11 (GUNSHOT RESIDUE TEST WHICH WAS ALSO MARKED
12 AS STATE'S EXHIBIT S-86 FOR IDENTIFICATION WAS
13 REMARKED AS DEFENDANT'S EXHIBIT D-1 IN EVIDENCE TO
14 THE MOTION TO SUPPRESS. HOWEVER, AS WILL BE SHOWN
15 DURING THE NEXT DAY OF TRIAL, THE DEFENDANT'S
16 EXHIBIT STICKER WAS REMOVED FOR THE BENEFIT OF THE
17 JURY SEEING THE PACKAGE AND SHOULD BE REPLACED UPON
18 APPEAL.)

19 BY THE COURT: Well, it is marked. Now let's
20 go on. Any more questions for him?

21 BY MR. LUMUMBA: I have no other questions of
22 this witness.

23 BY THE COURT: Do y'all have any questions of
24 him at this time?

25 BY MR. EVANS: No.

26 BY THE COURT: All right, Mr. Matthews you
27 will have to go back to the witness room right now.

28 WITNESS LEAVES COURTROOM.

29 BY MR. LUMUMBA: We would call Mr. Flowers.

1 **BY THE COURT:** Okay. Mr. Flowers, I can't
2 remember; were you sworn at the first of this
3 trial?

4 **BY THE DEFENDANT:** No, sir.

5 **BY THE COURT:** Raise your right hand.
6 (Defendant was sworn by the Court.)

7 **BY THE COURT:** Have a seat up there. Can I
8 see y'all at the bench first. This is on an
9 administrative matter. It has nothing to do with
10 this. I don't need this on the record.

11 (Off the record.)

12 **BY THE COURT:** All right, Mr. Lumumba you may
13 proceed.

14 **CURTIS GIOVANNI FLOWERS,**
15 a black male called to testify as a witness in his own behalf
16 on Defendant's Motion to Suppress, having first been duly
17 sworn, testified with the JURY OUT as follows, to-wit:

18 DIRECT EXAMINATION BY MR. LUMUMBA: JURY OUT.

19 Q. Mr. Flowers, I just want to ask you a few questions
20 here. I want to call your attention to July the 16th, 1996.
21 At some point in time did you see any police officers that
22 day?

23 A. Yes, I did.

24 Q. And where were they at?

25 A. At my home.

26 Q. And tell me who they were?

27 A. Highway Patrolman Dennis Woods and Officer Townsend
28 with the Winona Police Department.

29 Q. With the Winona Police Department?

1 A. Yes, they were.

2 Q. And you were at home when you saw them?

3 A. Yes.

4 Q. And could you tell me if they -- what happened?

5 A. Well, they pulled up in the Highway Patrolman's
6 car, and they come up and knocked on the door, and I let them
7 in, and we spoke and shook hands. And Dennis Woods, Officer,
8 State Highway Patrolman Dennis Woods told me that I needed to
9 come with them.

10 Q. He said you needed to come with them?

11 A. Yes, he did.

12 Q. Did he give you any options or tell you you didn't
13 have to come?

14 A. No, he didn't.

15 Q. And so did you interpret that as, that you had to
16 go?

17 A. Yes.

18 Q. Did you go?

19 A. Yes, I went.

20 Q. Did you ever arrive at the police station?

21 A. Yes, I did.

22 Q. And at any point in time did anybody at the police
23 station tell you that you didn't have to stay or you could
24 leave?

25 BY MR. HORAN: Objection, Your Honor. He is
26 leading his witness.

27 BY MR. LUMUMBA: Okay. I have no problem with
28 that.

29 BY THE COURT: Sustained.

1 come by the house in K-9 truck, and he told me that I needed
2 to come down to the station. They wanted to talk with me. I
3 told him I was baby sitting, and he told me that I had to
4 bring the kids with me, but I needed to come down.

5 Q. Did you go?

6 A. Yes, I did.

7 Q. And on that time on the 18th, did anyone at the
8 station say anything one way or the other as to whether you
9 had to remain?

10 A. No, they didn't.

11 Q. Okay. And did you have an opinion as to whether
12 you had to be there?

13 A. Yes.

14 Q. What was your opinion?

15 A. That I had to be there.

16 Q. Okay. On the 23rd, did you ever go to the police
17 station or anywhere else?

18 A. Yes, I did.

19 Q. And where was that?

20 A. At the Winona Police Department.

21 Q. Okay, and at any time on the 23rd-- how did you get
22 there on the 23rd?

23 A. Uh.

24 Q. You had already been there twice; right?

25 A. Yes.

26 Q. At least. Did you go more than twice or just
27 twice?

28 A. I was, I was dropped off down there on the 23rd by
29 Troy Yates.

1 Q. Okay, and why did you come?

2 A. They wanted to talk to me and give another
3 statement, and then they took me to Carrollton to do a
4 fingerprinting.

5 Q. Okay. And how did you get to Carrollton? What
6 kind of transportation?

7 A. Mr. Matthews and Mr. Miller.

8 Q. Okay. What was your feeling as to whether or not
9 it was in your discretion to refuse to come down there for
10 the fingerprinting?

11 A. Well, I was told I had to come.

12 Q. And on the 23rd, was there at any time when someone
13 was asking you questions about whether you went to, had been
14 by Anguilla-- what do you call it? Anguilla?

15 A. Angelica.

16 Q. Yeah, Angelica factory.

17 A. Yes.

18 Q. And who was asking you those questions?

19 A. Mr. John Johnson and Mr. Matthews.

20 Q. Okay, and at that particular time on the 23rd, did
21 either one of them indicate to you that you didn't have to be
22 there or you were free to leave?

23 A. No, they did not.

24 Q. Were you in the police station or somewhere else?

25 A. In the police station.

26 Q. Then when you went to Carrollton, were you also in
27 a law enforcement facility?

28 A. Yes, sir.

29 BY MR. LUMUMBA: I have no further questions

1 on that issue.

2 CROSS-EXAMINATION BY MR. HORAN: JURY OUT.

3 Q. Mr. Flowers, you admit here today that when the two
4 officers arrived, that they did not read you your rights, and
5 they did not arrest you at that time, did they?

6 A. Well, they did not read me my rights.

7 Q. They didn't tell you that you were charged with
8 murder or anything like that--

9 A. They just told me that I had to come with them.

10 Q. They asked you to come down there, did they not?

11 A. They didn't ask me. They told me I had to come
12 with them.

13 Q. And when you got down there, you say you greeted
14 some people there?

15 A. Yes.

16 Q. And Mr. Matthews and Mr. Johnson are two of those
17 individuals that--

18 A. --That's correct.

19 Q. And they told you you were not under arrest. At
20 that time you were not served with a warrant, were you?

21 A. No, they just told me they wanted to talk with me.

22 Q. And after they talked to you, they let you go?
23 They told you you could leave?

24 A. Yes, they did.

25 Q. Did they inquire as to whether or not you needed a
26 ride or not?

27 A. No, they didn't. I walked back home.

28 Q. Okay, well, you didn't ask--

29 A. --I asked for a ride. But he told me they had to

1 go somewhere else, that I had to walk.

2 Q. And on the 18th -- you went home and two days later
3 they called your residence or got up with you; right?

4 A. On the 18th?

5 Q. On the 18th.

6 A. No, they did not.

7 Q. How did they get up with you?

8 A. Jerry Yates. Officer Yates came by.

9 Q. Jerry Yates, was he an officer at that time?

10 A. Yeah, he was in the K-9 field for that time.

11 Q. And yeah, that's right. Jerry Yates, and that is
12 Troy Yates' brother; right?

13 A. That's right.

14 Q. And your daddy at that time worked for Troy Yates?

15 A. That's correct.

16 Q. You knew Jerry Yates; right?

17 A. I knew Jerry, yeah; Troy too.

18 Q. And it would be safe to say that Jerry would know
19 your whereabouts at that particular time. If he got up with
20 Troy and said--

21 A. --no, he wouldn't--

22 Q. --you know where Curtis is, don't you?

23 A. They don't know my whereabouts. They just know me.

24 Q. But Jerry, it would be safe to say that Jerry would
25 have some information about you that some of the other
26 officers may not have because of--

27 A. --well, Jerry--

28 Q. Please let me finish, and then we will go from
29 there?

1 A. Okay.

2 Q. Jerry is Troy's brother. Troy employed your
3 daddy. I mean it is quite possible that they contacted
4 Jerry Yates because they felt like - that is not uncommon -
5 that Mr. Yates may have more information where you were on
6 that particular date?

7 A. No.

8 BY MR. LUMUMBA: Objection. I don't think he
9 could read anybody else's mind.

10 BY MR. HORAN: I said safe to say, and this is
11 cross-examination.

12 BY THE COURT: I will allow it.

13 BY THE WITNESS:

14 A. Repeat the question.

15 Q. I mean it's not, it wouldn't be unusual for, if I
16 was trying to get up with you, that I would find someone that
17 may know your whereabouts on that particular day; right?

18 A. Well, yes, if they knew my whereabouts, but Jerry
19 didn't know my whereabouts. Neither did Troy.

20 Q. Okay. But on the 18th, they told you that you
21 would have to bring your children with you?

22 A. That's correct. That's what Mr. Yates told me.

23 Q. And you did that?

24 A. And he said, "I will watch them." Yes, I brought
25 my stepson with me.

26 Q. And you didn't think that you were under arrest at
27 that time, did you?

28 A. I didn't know what was going on. All he was doing,
29 he just told me they needed me down at the station.

1 Q. And they let you go on that particular day, did
2 they not?

3 A. Yes, they did.

4 Q. And on the 23rd, they let you go?

5 A. Yes, they did.

6 Q. And you were not arrested until what day? What day
7 were you actually picked up and served a warrant?

8 A. January the 13th of '97.

9 Q. And these two officers, they greeted you there at
10 your residence. That's your testimony?

11 A. Which two officers?

12 Q. The two officers the first day.

13 A. Yes, they did.

14 Q. Who were they?

15 A. Officers Woods and Officer Townsend.

16 Q. And they did not handcuff you?

17 A. No, they didn't.

18 Q. You did not get handcuffed on the 18th?

19 A. No, I didn't.

20 Q. And you did not get handcuffed on the 23rd?

21 A. No, I did not.

22 Q. The officers did not threaten you in any way on the
23 16th, did they?

24 A. No, they did not.

25 Q. And you are not telling this Court that that was
26 not a voluntary statement that you made. I mean you signed
27 that waiver?

28 A. Yes, I did.

29 Q. You read that waiver?

1 A. Yes, I did.

2 Q. You understood that waiver?

3 A. Yes, I did.

4 Q. You were not coerced at that time. It's your
5 testimony that you weren't coerced into making the statement?

6 A. No, I was not.

7 BY MR. HORAN: No further questions.

8 BY MR. LUMUMBA: I have none.

9 BY THE COURT: Okay, you may return to your
10 seat.

11 DEFENDANT RETURNS TO COUNSEL TABLE.

12 BY THE COURT: Have you got any further
13 witnesses on this Motion?

14 BY MR. LUMUMBA: No, sir. I just have a brief
15 argument. The only one who would know what
16 happened when he was confronted by police officers
17 on the 16th for the first time has testified that
18 he was told that he needed to come to the station
19 by a person who is a law enforcement officer who
20 then proceeded to take him to the station.
21 Actually, he said it was two of them. He said that
22 he had no-- his view was that he had to come.

23 Miranda does not require that you be formally
24 put under arrest. It requires that you be in
25 police custody, and many cases have held that a
26 formal arrest is certainly not necessary in order
27 to bring about the rights that you have not to be
28 subjected to an illegal arrest. I think that he
29 was arrested even though-- if you are not free to

1 leave, you are arrested, and he was not free to
2 leave. He was told that he had to-- in one
3 instance he was even told that he had to bring the
4 children with him. So in neither situation was he
5 free to leave or given the impression that he was
6 free to leave.

7 As to what was said at the police station, one
8 officer has just testified, Mr. Matthews - who
9 can't remember that he was there on the 23rd
10 although we have just seen evidence that he was
11 present on the 23rd, so his memory apparently is
12 failing him a little bit on this issue - has
13 testified that he was told that. However, the
14 Defendant has clearly said he was not.

15 It is the State's burden whenever we challenge
16 a constitutionality of any particular arrest or
17 evidence or any other kind of procedures to prove,
18 it is their burden to show this Court that the
19 challenged evidence was taken legally. I think
20 they have failed this burden given the evidence in
21 question.

22 And then a final thing I would say is I wanted
23 the Court to keep in mind Brown v. Illinois which I
24 have a book here that cites, but Brown v. Illinois
25 says that the giving of Miranda rights, even if
26 they are voluntarily given and the statement is
27 voluntarily taken, does not vindicate or does not
28 alleviate the illegality of the arrest. Brown v.
29 Illinois is a very, is a case that made a pretty

1 clear pronouncement on the old fruit of the
2 poisonous tree doctrine which has been generated
3 long ago, I think in Wong Sun and all those other
4 cases that you read about in law school. But Brown
5 v. Illinois is a case of vintage sometime in the
6 60's or the 70's - I can't remember-- no, actually
7 -- no, I was practicing law when it came out. So
8 it had to be in the, like in the 70's or the 80's.
9 And Brown v. Illinois clearly states, and it's a
10 case where a person was given Miranda rights, no
11 question that he was given them, that he gave a
12 statement. And because the arrest was illegal, -
13 they didn't have enough information to arrest him
14 on at the time - they ruled that the, in the Brown
15 v. Illinois case, that the case, that the statement
16 had to be suppressed.

17 And one final thing I would point out. What
18 officers used to do a lot of times is they would
19 arrest you for an investigation of murder or
20 investigation of this and investigation of that.
21 And what they have-- and there was a ruling that
22 arresting somebody for the investigation of
23 something was totally illegal. And so what-- but
24 the same thing is accomplished if you take somebody
25 into custody, tell them they have to go or need to
26 go and that you are going, and you don't give them
27 a right or tell them that they have a right to
28 leave. The same thing is accomplished, so at that
29 point whether they arrest him for investigation or

1 not officially, it's still the same effect. And no
2 case has ever ruled that they have to officially
3 arrest you.

4 In fact, I'm not even sure; I think the
5 Miranda case is to the contrary. I don't even
6 think the person was arrested in the Miranda case
7 officially. If it was arrested officially in the
8 Miranda case, I know that there are several other
9 cases in the Miranda progeny where people were not
10 arrested. They were just detained.

11 **BY THE COURT:** Right. "Arrest" is not a magic
12 word. I understand that.

13 **BY MR. EVANS:** Your Honor, to start with, in
14 this particular case the evidence is clear from
15 Jack Matthews that this Defendant was not under
16 arrest. He was not in custody. As a matter of
17 fact, the officers said that he specifically told
18 him that he was free to leave at any time he wanted
19 to. He was not under arrest.

20 Now the law is clear in this state that when a
21 person is not in custody, his rights do not have to
22 be advised to him at all. Of course, we are not
23 even on rights because he has freely and
24 voluntarily admitted in open court under oath that
25 he freely and voluntarily waived all of his
26 rights. He freely and voluntarily made these
27 statements. So to start with, he is not under
28 custody. He is not under arrest. He is free to
29 leave at any time. He is told he is not under

1 arrest. He was only there for a short period of
2 time, and all we had was a situation where officers
3 were trying to gather information from anybody
4 around town that they could that morning that had
5 any information that might point them in the right
6 direction. He happened to be one of the people
7 they talked to. He was not under arrest.

8 Even assuming, which he was not, but even
9 assuming the other things, the statements that he
10 gave are non-incriminating. Conner itself says
11 that if a statement is non-incriminating, none of
12 these apply anyway. But the main issue and the one
13 that I think is the one here before the Court today
14 is he was not under arrest.

15 He was not in custody. He was free to leave.
16 I think that is clearly proven by several facts.
17 One, the officer told him that; the other he was
18 only there for a few minutes. He left and he came
19 back several times on his own and talked to them at
20 different times and left after those times.

21 BY MR. LUMUMBA: Judge, my other rejoinder is
22 I also want to remind the Court that although the
23 officer says that he was free to leave and that he
24 wasn't suspect, the form that he signed says he was
25 a suspect. And there is no magic requirement to
26 use that form, and whenever I use a form which is
27 inapplicable to what I am doing, I just scratch out
28 the term that is inapplicable for the record and
29 put down what is applicable. And what would have

1 been applicable at that time is Curtis Flowers did
2 this; Curtis Flowers did that.

3 I have often seen polygraph tests where they
4 don't put the term in suspect. What they do is
5 they put in the term reflecting what the person's
6 name is or examinee or something of that nature.

7 But in any event, so I think that that is
8 where we have contrary evidence. So as to the
9 16th, I think it is a very powerful indication that
10 he was not free to go. And I don't know of any law
11 that says -- if they are using, if they are using
12 the statements against him in this trial, that is a
13 pretty good indication that they are
14 incriminating. Now they may not have been
15 statements of what we have termed quote, unquote
16 confessions, but any statement is privileged and is
17 not-- and the Fifth Amendment doesn't just protect
18 things that where you are consciously incriminating
19 yourself. The Fifth Amendment protects all
20 statements because the Fifth Amendment, as you well
21 know, the police can use statements in a variety of
22 ways in order to create the impression of guilt.
23 And for that reason it is pretty comprehensive in
24 that regard. I don't know of any law which has
25 said that that has been compromised.

26 **BY THE COURT:** All right, in the Court's
27 opinion this is not really a close call. The
28 Defendant has taken the stand and admitted that his
29 statement was, statements were freely and

1 voluntarily given. Even if the arrest were
2 illegal, Brown holds that that does not necessarily
3 automatically vitiate the confession. It goes into
4 the officer's misconduct. It has to take the test
5 of whether he was given his rights, and you go into
6 a lot of tests. Just the fact that an arrest is
7 illegal or a custodial thing, being taken into
8 custody was illegal, an illegal detention does not
9 in and of itself throw it out. There are other
10 factors that have to be considered.

11 I hold that one, he was not in custody. They
12 asked him or maybe told him to come to the police
13 station and picked him up, took him there. He was
14 only there 30 minutes. They let him leave after he
15 talked. He did not make an incriminating statement
16 on that day according to the testimony that is
17 before this Court. He was read his rights. Two
18 days later he was read his rights again. He also
19 made another statement. I don't recall there being
20 any testimony as to how long that statement took,
21 but anyhow apparently it was not incriminating.
22 And he himself testified that nobody told him he
23 could not leave, and apparently when it was over,
24 he left. And he apparently did that a third time
25 on the 23rd when he took a polygraph test. And
26 after that was over and I assume after the results
27 were read, he was once again released. And then he
28 was not arrested until, I believe the testimony -
29 y'all correct me if I am wrong - about 18 months

1 later. It was a substantial time after that.

2 So I hold he was not in custody. But I also
3 hold that if, in fact, he was in custody and if it
4 was illegal, the statement was still freely and
5 voluntarily given, and there is no law enforcement
6 misconduct that would invalidate the confession.
7 So the Motion to Suppress is overruled.

8 BY MR. EVANS: Before the jury comes back in,
9 Your Honor, I know you had ruled that you were
10 going to take another expert out of order.

11 BY THE COURT: No, I didn't.

12 BY MR. EVANS: Oh, okay.

13 BY THE COURT: We are going to do it Monday.

14 BY MR. HORAN: Is he available Monday?

15 BY THE COURT: Yes. That's what he has told
16 me.

17 BY MR. EVANS: Okay.

18 BY THE COURT: Let's take a break.

19 (FOLLOWING A RECESS ON MARCH 26, 1999, THE
20 COURT AGAIN CONVENED IN OPEN COURT WITH ALL
21 COUNSEL, THE DEFENDANT, AND THE JURY PRESENT FOR
22 THE FOLLOWING:)

23 BY THE COURT: We have kind of reached one of
24 those points where we can stay a while or we can
25 quit for the day, and we would be a while if we
26 stayed. So I'm going to quit for the day, and we
27 will start back in the morning at 9 o'clock.

28 Now I give y'all the same instructions. I
29 know you are getting tired of hearing me say this,

1 but I'm going to do it every day. You still cannot
2 discuss this matter amongst yourselves nor with
3 anybody else nor let anybody discuss it with you or
4 in your presence. You must not, you cannot, as I
5 told you, you cannot read any newspapers. My
6 understanding is, and y'all tell me if I am wrong;
7 y'all can't get the local news, can you?

8 BY THE JURORS: No.

9 BY THE COURT: Okay. I am confident this
10 won't be on national news. But if it is, y'all
11 don't look at it. Do not pay any attention to any
12 media coverage at all, and that is all based on the
13 fact you have to decide this case on what we are
14 doing in here.

15 Any further instructions from either side?

16 BY MR. LUMUMBA: No, I have none, Judge.

17 BY MR. HORAN: Nothing from the State.

18 BY MR. EVANS: No.

19 BY THE COURT: Ladies and gentlemen, I will
20 see y'all in the morning at 9 o'clock.

21 JURY LEAVES THE COURTROOM.

22 BY THE COURT: Let me make this statement
23 about what the situation is tomorrow. You might
24 tell whoever else is out in the hall, the only way
25 you are going to be able to get in here in the
26 morning is to come through this back door on the
27 west side of the courthouse. That will be the only
28 door that is open because we are going to be the
29 only ones here.

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BY THE BAILIFF: Right in the middle of the
building on the west side.

BY THE COURT: All right, Court will be
adjourned until tomorrow.

(COURT WAS RECESSED FOR THE DAY AT
APPROXIMATELY 4:50 P.M. ON MARCH 26, 1999.)

1 (TRIAL CONTINUED ON SATURDAY, MARCH 27, 1999,
2 IN OPEN COURT WITH THE COURT, ALL COUNSEL, AND THE DEFENDANT
3 PRESENT:)

4 (INTERVIEW WITH CURTIS FLOWERS BY JACK
5 MATTHEWS ON 7/18/96 WAS MARKED AS STATE'S S-107 FOR
6 IDENTIFICATION PRIOR TO THE START OF THE
7 PROCEEDINGS ON THIS DATE.)

8 BY THE COURT: Y'all ready to proceed?

9 BY MR. EVANS: Yes, sir.

10 BY THE COURT: Bring the jury in, and Mr.
11 Matthews needs to come to the stand.

12 JURY ENTERS THE COURTROOM.

13 BY THE COURT: Good morning.

14 BY THE JURY: Good morning.

15 BY THE COURT: Okay, Mr. Evans, you may
16 proceed.

17 BY MR. EVANS: Thank you, Your Honor.

18 JACK MATTHEWS,

19 having begun his testimony on the day previous and having
20 been previously sworn, testified further with the jury
21 present as follows:

22 CONTINUED DIRECT EXAMINATION BY MR. EVANS:

23 Q. All right, Mr. Matthews, I think where we were when
24 we stopped off with you yesterday, I was asking you if you
25 had an occasion to talk with the Defendant on the day of the
26 murders. Is that correct?

27 A. Yes, sir.

28 Q. And did you have an occasion to talk with him that
29 day?

1 A. Yes, sir. I did.

2 Q. If you would, tell us basically what he told you
3 that day?

4 A. He told us that he had previously worked at Tardy
5 Furniture Company, that he had been employed there on June
6 the 29th of 1996, that he worked that Saturday, the 29th. He
7 also worked that Monday which would have been the 1st; that
8 he worked on the 2nd, and he worked on the 3rd. The day of
9 the 3rd Ms. Tardy had sent him to the Coast to Coast store
10 which is located down the street from Tardy Furniture Company
11 to pick up some batteries. And he went down there and picked
12 those batteries up, and when he loaded them on the truck, as
13 he was driving away, he stacked the batteries up on top of
14 one another. And as he was driving away, they fell off the
15 truck, and three of them broke. He also stated that that day
16 that she told him--

17 BY MR. LUMUMBA: --Excuse me, Judge--

18 BY THE WITNESS:

19 A. --if the store could not make the batteries right--

20 BY MR. EVANS: --Wait until the objection.

21 BY MR. LUMUMBA: May I approach?

22 BY THE COURT: Uh-hum.

23 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
24 THE JURY AS FOLLOWS:)

25 BY MR. LUMUMBA: I have an objection to
26 anything Ms. Tardy told him. The Defendant's
27 statement is admissible as a statement by the
28 Defendant or a statement by a party at interest.
29 Ms. Tardy's statement is also hearsay. It is

1 hearsay in hearsay, what they call double hearsay,
2 and there is no exception for her statement, so her
3 statements can't come in.

4 **BY THE COURT:** Well, only to this extent
5 though. He is saying what he said, and he said she
6 said, so he can testify to that.

7 BY MR. LUMUMBA: But that is hearsay in
8 hearsay, Judge.

9 **BY THE COURT:** But it is his statement. I
10 would agree with you if it wasn't his statement.

11 BY MR. LUMUMBA: Well, okay, I don't guess we
12 are allowed to argue about it, but it's a classic
13 hearsay within hearsay. You have got to have an
14 exception to both hearsays. You can testify to
15 what he said, but you can't testify to what he said
16 that somebody else said unless that what somebody
17 else said is an exception to the hearsay rule.

18 **BY THE COURT:** I don't think that is the law,
19 so I'm going to allow it in.

20 BY MR. LUMUMBA: Okay. Thank you, Judge.

21 END BENCH CONFERENCE.

22 BY MR. EVANS: May I proceed, Your Honor?

23 **BY THE COURT:** Yes.

24 BY MR. EVANS:

25 Q. All right, Mr. Matthews, continue with what you
26 were saying.

27 A. And as he was pulling off from the store, the
28 batteries fell off and broke, and he was instructed that if
29 he didn't, if the store would not make the batteries right,

1 then because he did not strap the batteries down on the
2 truck, that he would be responsible for them. And he stated
3 that they closed on Wednesday afternoon that day, which that
4 was July the 3rd, the 4th being that Thursday, July the 4th,
5 a holiday, did not work that day. And as he was leaving work
6 that day, his employer, Ms. Tardy, asked him if he needed any
7 money for the 4th, over the holiday, and he said yes that he
8 did. She gave him \$30.00.

9 Q. All right. Go ahead.

10 A. And that on the-- he supposed to show up for work
11 on the 5th, which would have been Friday. He didn't show up
12 that day, and he was supposed to show up on the 6th, and he
13 didn't come back to work on that day either. And sometime
14 that next week, that Monday or Tuesday, that he had called
15 the store to ask if he still had a job. And he was
16 instructed that they couldn't use him any more, and he asked
17 if he had any money coming. And Mrs. Tardy told him that she
18 had told him about the batteries, that if the store would not
19 make them good, then he would be responsible for it, and what
20 he had coming in his check for the days that he worked was
21 eaten up by the batteries.

22 Q. All right, what else did he tell you about that
23 event, if anything?

24 A. He told us that, that he had-- the day that the,
25 the 16th. We asked him about his whereabouts on that day,
26 about where he was that morning. And he told us that he had
27 gone, he had gotten up that morning. He had gone to his
28 sister's house, which I believe is on Dennis Street, and that
29 he had also gone to Kelly's Stop and Go which is a

1 convenience store located there on the edge of 51 Highway.

2 Q. All right, let me stop you there. In the first
3 statement he gave you on the 16th, what time did he tell you
4 that he got up?

5 A. He said he got up sometime after 7 o'clock.

6 Q. And do you remember what time he told you that he
7 went to his sister's house?

8 A. He said it was sometime around 9 or 10 o'clock that
9 morning.

10 Q. And do you remember what time he told you that he
11 went to Troy's store?

12 A. Sometime around 11:00.

13 Q. Okay. Let me hand you some notes.

14 BY MR. EVANS: Your Honor, may I -- well, may
15 I have this marked for identification only?

16 BY THE COURT: Yes, sir.

17 (NOTES FROM INTERVIEW OF 7/16/96 WAS MARKED AS
18 STATE'S EXHIBIT S-108 FOR IDENTIFICATION.)

19 BY THE COURT: You have seen this?

20 BY MR. LUMUMBA: Yes, sir.

21 BY MR. EVANS:

22 Q. I am showing you Exhibit 108 and ask you to refer
23 to that if you would.

24 A. (Pause while witness looks at exhibit.)

25 Q. Have you had a chance to look over the notes?

26 A. Yes, sir.

27 Q. And what is that document?

28 A. These are some notes that were made by John Johnson
29 at our interview on July the 16th, 1996.

1 Q. Were you present when they were made?

2 A. Yes, sir. I was.

3 Q. Does that document help you reflect the exact times
4 that the Defendant told you in that statement?

5 A. Yes, sir.

6 Q. What time did the Defendant tell you that he got up
7 that morning in the first interview?

8 A. He said he got up at 6:30 A M.

9 Q. What time does he tell you that he went to his
10 sister's house?

11 A. 9:15 to 9:30.

12 Q. And what time did he tell you he went to Troy's
13 store?

14 A. At 10:30.

15 Q. All right, that interview was on the 16th, the same
16 day of the murders; is that correct?

17 A. That's correct.

18 Q. Also on that day-- well, first let me just hand you
19 Exhibit 86 for identification and ask you if you can identify
20 what this is?

21 A. This is a gunshot residue evidence collection kit.

22 Q. Have you seen that gunshot residue kit before?

23 A. Yes, sir; I have.

24 Q. And where did you see it and under what conditions?

25 A. This is the gunshot residue kit that I used to take
26 a sample from Curtis Flowers on July the 16th of 1996.

27 Q. Does it appear to be in the same or substantially
28 the same condition now as it was in when you used it to
29 conduct that test?

1 A. Yes, sir.

2 BY MR. EVANS: I offer this exhibit into
3 evidence, Your Honor.

4 BY THE COURT: Same or any objection?

5 BY MR. LUMUMBA: None other than the general
6 objections we raised as to the suppression hearings
7 prior to trial, Your Honor.

8 BY THE COURT: Let it be admitted.

9 (GUNSHOT RESIDUE KIT PREVIOUSLY MARKED AS
10 STATE'S EXHIBIT S-86 FOR IDENTIFICATION WAS NOW
11 RECEIVED IN EVIDENCE. THE DEFENDANT'S EXHIBIT D-1
12 STICKER WAS REMOVED FROM THE EXHIBIT PRIOR TO THE
13 START OF PROCEEDINGS ON THIS DATE WITH THE
14 AGREEMENT OF ALL COUNSEL.)

15 BY THE COURT: (To Mr. Evans at the bench) Did
16 y'all work out the stamps?

17 BY MR. LUMUMBA: Could we approach just for a
18 minute?

19 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
20 THE JURY AS FOLLOWS:)

21 BY THE COURT: My question to him was have we
22 worked out the exhibit labels?

23 BY MR. LUMUMBA: Yeah, I think so.

24 BY THE COURT: Let me see it.

25 BY MR. LUMUMBA: We need to put that on the
26 record. She took it off.

27 BY THE COURT: All right, let the record
28 reflect that yesterday at the suppression hearing
29 there was a label placed on this exhibit that said

1 Motion to Suppress. At the Court's direction and
2 by agreement of the parties that label has been
3 taken off. If there is an appeal in this case, it
4 will be marked to show that that was an exhibit in
5 the Motion to Suppress, and for the record this is
6 S-86.

7 BY MR. LUMUMBA: Okay. Let me also say that
8 we have a motion to-- our motion includes the
9 motion to suppress all evidence seized in this case
10 under the fruit of the poisonous tree doctrine.
11 That was what I was saying, and our understanding
12 that in denying that the arrest was illegal, the
13 Court has essentially well denied that there was an
14 arrest, you know, in denying that motion. The
15 Court has essentially overruled.

16 BY THE COURT: That too, right. Okay.

17 END BENCH CONFERENCE

18 BY MR. EVANS:

19 Q. Mr. Matthews, I will hand you back Exhibit 86, and
20 again I will ask you to explain to the ladies and gentlemen
21 of the jury what that is?

22 A. This is a gunshot residue kit that is used to
23 collect gunshot residue from the hands of people that we
24 think maybe are, or may or may not have fired a weapon.

25 Q. Okay. And that particular kit was used on the
26 Defendant Curtis Flowers?

27 A. Yes, sir. It was.

28 Q. Before you conducted that kit, what, if anything,
29 did you do to protect the integrity of the kit?

1 A. I washed my hands. After I washed my hands, I used
2 rubber gloves to take the sample from Mr. Flowers.

3 Q. All right. Before you took that sample, did you
4 have any physical contact with Mr. Flowers?

5 A. No, I did not.

6 Q. You did not shake hands with him?

7 A. No, sir.

8 Q. When you washed your hands and you put the rubber
9 gloves on, what was the next step that you took?

10 A. Inside the packet are some vials. And each vial
11 contains a sample kit to take the samples, and you take from
12 the back right hand. You use that one; you place it back in
13 the cannister. You use the back, the next one for the palm.
14 Then you do the left hand back and then the right palm-- I
15 mean the left palm.

16 Q. In those four vials are they marked? Do they tell
17 you which one to use for what area of the hand?

18 A. Yes, sir. They do.

19 Q. If you would, pull out the one for the right back
20 of the hand, please.

21 A. (Witness pulls out vial and hands it to Counsel.)

22 BY MR. EVANS: Your Honor, may I have the
23 witness step down?

24 BY THE COURT: Yes.

25 BY MR. EVANS:

26 Q. If you would, step down over here in front of the
27 jury. I don't want you to open it, but if you would, take my
28 right hand and just show the ladies and gentlemen of the jury
29 basically acting like it was opened, how you conducted that

1 test on the right back of Curtis Flowers' hand that day?

2 A. This brown plastic part comes out of this plastic
3 cannister. And you take the subject's hand in this area, and
4 you take the end of this and you swab all in this area and on
5 the back of the hand. An individual firing a handgun that is
6 right handed, a good bit of the muzzle blast is excreted back
7 into this area of your hand, and you do, you come down and
8 try to do all of the back area, all the way back over to here
9 paying particular attention to this area right in here,
10 inside the palm and the forefinger.

11 Q. Okay. Thank you.

12 A. (Witness resumes witness stand.)

13 Q. Did you have an occasion that day to find out
14 during your interview whether the Defendant was right or left
15 handed?

16 A. I asked him, and he indicated that he was right
17 handed.

18 Q. After you conducted the gunshot residue test, what
19 did you do with these ampules?

20 A. I placed them back into this envelope, and I sealed
21 it.

22 Q. And did you deliver it anywhere to be tested?

23 A. Yes, sir. I delivered it to the Mississippi Crime
24 Lab in Jackson.

25 Q. Did you have an occasion on that same day to
26 examine the shoe wear that the Defendant had on at that
27 particular time of the day?

28 A. Yes, I did.

29 Q. What size shoe did he have on?

1 A. He had on a ten and a half.

2 Q. And do you remember what type of shoes he had on at
3 that time?

4 A. I believe they were Nikes, Nike brand.

5 Q. Were you present at the Defendant's house when
6 Exhibit 61 was recovered or when it was found there?

7 A. No, sir. I was not.

8 Q. Did you at any time go to the Defendant's house?

9 A. Yes, I did.

10 Q. What date was that?

11 A. I believe that was on July the 20th.

12 Q. Okay. Was anything recovered at his house on that
13 day?

14 A. Yes, sir. We recovered some clothing, some shoes.

15 Q. What type of shoes were recovered then?

16 A. I believe they were also Nikes.

17 Q. At that particular time did y'all have any way or
18 what, if any, way did y'all have of knowing what type of shoe
19 had actually left the bloody shoe impression that the
20 photograph showed?

21 A. We had looked at the photograph of the impression
22 made in the blood of the shoe and had talked with some
23 individuals at some shoe stores to see if we could determine
24 what type shoe made that impression, and from everything we
25 gathered, it appeared to be a Fila Grant Hill tennis shoe.

26 Q. Did you later have an occasion on July the 18th to
27 talk with the Defendant again?

28 A. Yes, we did.

29 Q. Basically, what did he tell you on that day?

1 A. He told us pretty well basically what he had told
2 us on the 16th. There were some discrepancies in the time
3 that he said he got up that morning and the time that he had
4 gone to his sister's house and the time that he had gone to
5 Kelly's Stop and Go convenience store.

6 Q. All right. Do you remember those times, or do you
7 need to look at the interview for those times?

8 A. I probably need to look at the interview.

9 Q. All right. Before we get into that, before I hand
10 this to you, what, if anything, did he tell you about being
11 terminated from the store?

12 A. He said that in his conversation with Ms. Tardy
13 back on the week after he left the employee, that he had
14 called her back, and she had indicated that she could not use
15 him any more because he was not reliable. He didn't show up
16 for work and that he was being let go.

17 Q. All right. And let's see.

18 BY MR. EVANS: Your Honor, I believe we have
19 one of these that is already marked.

20 Q. I will hand you Exhibit 107, and I will ask you to
21 kind of follow along in that exhibit while I ask the
22 questions. On page 4 of that exhibit. (Pause.) I will ask
23 you to read through the first half of that page first, if you
24 would.

25 A. This is myself talking, Matthews.

26 BY MR. LUMUMBA: Judge, I would object. I
27 would think that especially when it comes to a
28 Defendant's statement, that if any of it should be
29 read, he should read all of it.

1 BY MR. EVANS: Your Honor, I have no problem
2 with that, but I don't think the Defendant is going
3 to want it all read.

4 BY THE COURT: That is Mr. Lumumba's call.

5 BY MR. LUMUMBA: I would certainly object to
6 that. We can approach the bench and discuss--

7 BY MR. EVANS: --It doesn't matter. I will be
8 glad to offer it all.

9 BY MR. LUMUMBA: Well, we can discuss it.

10 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
11 THE JURY AS FOLLOWS:)

12 (Mr. Lumumba scans through exhibit.)

13 BY MR. LUMUMBA: I'm not aware of anything I
14 have a problem with. If Counsel wants to highlight
15 what he is talking about, if there is something in
16 here which is--

17 BY THE COURT: I can't be much help because I
18 don't think I have ever seen it.

19 BY MR. EVANS: Your Honor, to try to speed
20 things up, I have no problem with it. I really
21 don't think that it is incriminating, but out of
22 fairness to the court system and for worrying about
23 appeal, there are questions in there that ask him
24 questions about a burglary that had occurred at
25 that store also. Out of precaution, I throw that
26 out before the Court.

27 BY MR. LUMUMBA: Okay, well, what I would do,
28 Judge, is that I, you know, I'm not-- well, I would
29 like the whole statement in because at this point

1 the statement has been made before the jury, and
2 let me state for the record why I don't have a
3 problem with the statement. I think Counsel needs
4 to be just a little more careful with his
5 statements before the jury, and I'm not trying to
6 be cynical or anything.

7 **BY THE COURT:** I understand. Both of y'all
8 need to not comment on the other's tactics.

9 BY MR. LUMUMBA: Okay, but I have no problem
10 with this coming in.

11 **BY THE COURT:** Okay, well, let me-- I want to
12 make sure--

13 BY MR. LUMUMBA: --I mean, you know, what I'm
14 saying is that if any of it comes in, I want all of
15 it to come in.

16 **BY THE COURT:** Let me make this statement. I
17 don't know what is in there. The District Attorney
18 has just said there is some questioning about other
19 crimes or bad acts.

20 BY MR. LUMUMBA: Yeah, well, he says--

21 **BY THE COURT:** --Do you waive any objection to
22 that?

23 BY MR. LUMUMBA: Well, at this point I do
24 understanding that the Court has made a ruling
25 which allows it in. Do you see what I'm saying?

26 **BY THE COURT:** Well, I haven't made a ruling
27 that allows that part in.

28 BY MR. LUMUMBA: Okay.

29 BY MR. FREELON: We can redact that part out.

1 BY MR. EVANS: He said he wants the whole
2 statement in.

3 BY MR. FREELON: About other furniture, about
4 other break-ins?

5 BY MR. LUMUMBA: Well, yeah, we can redact
6 that part.

7 BY THE COURT: I gather in that there he does
8 not admit that?

9 BY MR. EVANS: Uh-uh.

10 BY MR. LUMUMBA: He doesn't admit to it.

11 BY MR. EVANS: I just throw that out out of
12 caution.

13 BY MR. LUMUMBA: Yeah, I am not objecting to
14 that either at this point.

15 BY THE COURT: Okay, all right.

16 END BENCH CONFERENCE

17 BY MR. EVANS:

18 Q. Have you still got the copy that I handed you of
19 the statement on the 18th, Mr. Matthews?

20 A. Yes, sir.

21 BY MR. EVANS: Your Honor, I offer this entire
22 exhibit into evidence.

23 BY MR. LUMUMBA: We have no objections other
24 than the ones we raised earlier. At this point we
25 have no objection.

26 BY THE COURT: Okay, sustained-- I mean it is
27 allowed. Let it be marked.

28 (INTERVIEW WITH CURTIS FLOWERS ON JULY 18,
29 1996, PREVIOUSLY MARKED AS STATE'S EXHIBIT S-107

1 FOR IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

2 BY MR. EVANS:

3 Q. Mr. Matthews, you got plenty of water?

4 A. I hope so.

5 Q. I want to hand you back Exhibit 107, and I will ask
6 you if you would, to read that statement to the jury. If you
7 would, just signify-- you don't have to say Matthews asking
8 and Flowers answering. Just say "Question" and "Answer" and
9 what each comment was.

10 BY THE COURT: Let me for clarification, the
11 only two people involved in this statement are him
12 and the Defendant; is that right? As far as
13 speakers?

14 BY THE WITNESS: No, sir.

15 BY MR. EVANS: There may possibly be some
16 questions I think from Wayne Miller, another
17 investigator.

18 BY THE COURT: Okay, you might better clarify
19 that as you go through.

20 BY MR. EVANS:

21 Q. Okay, when you run into something that is not your
22 question, just tell the jury who asked that question.

23 A. Okay. This is an interview with Curtis Flowers.
24 The date is July the 16th [sic], 1996. The place this
25 interview is taking place is at the Winona Police
26 Department. The interview is being conducted by Master
27 Sergeant Jack Matthews. Also present is Lieutenant H. W.
28 Miller. This was just for the testing purposes of the tape
29 recorder. "Testing one, two, three, test," and this is

1 myself talking. Today's date is 18 July, 1976 [sic]. The
2 time is 1502"--

3 Q. --Mr. Matthews, I hate to interrupt you, but look
4 at the year.

5 A. 1996, excuse me. "At the Winona Police Department
6 in Winona, Mississippi. Interviewing Curtis Flowers." I
7 spell his name out. "Curtis' date of birth is 5-29-70.
8 Conducting this interview will be Master Sergeant Jack
9 Matthews, Investigator with the Mississippi Highway Patrol.
10 Also present is H. W. Miller, Investigator with the
11 Mississippi Highway Patrol. Today's date, ah, is 18 July."

12 Question: "Curtis, ah, just a few minutes ago we
13 read a statement of your rights, and you understand what your
14 rights are and you signed a waiver. Is that correct?

15 Answer: Yes, sir.

16 Question: Okay. And you agreed to talk with us
17 today about your employment at" Tardy Furniture Company--
18 correction, "Tardy's Furniture Store?

19 Answer: Yes, sir.

20 Question: And, ah, some details about that?

21 Answer: Yes, sir.

22 Question: Okay. I need to talk back with you on
23 ah, 16, July the 16th. And you indicated that around July
24 the 1st, that you were employed at Tardy's Furniture Store?

25 Answer: The 29th.

26 Question: And you worked there a few days."

27 That was a question also.

28 Question: "Okay. The 29th of" July [sic]?

29 Answer: "Mhm.

1 Question: Okay.

2 Answer: That Saturday.

3 Question: All right. That was on a Saturday.

4 Answer: Mhmm.

5 Question: Okay. That was the first day that you
6 worked; right?

7 Answer: Yes, sir.

8 Question: All right. Tell us a little about, ah,
9 about the time you started to work with them and why you left
10 and some of the things that we talked about the day before.

11 Answer: Well, Saturday was my first day. I worked
12 Saturday, Monday, Tuesday, Wednesday we get off at 12 noon.
13 Work half a day on Wednesday. That was the 3rd. Supposed to
14 come back the fifth and the sixth. I didn't show up.

15 Question: You told us about an incident that
16 happened, I believe on the third concerning some batteries
17 that you were supposed to pick up. Tell us about that.

18 Answer: Yeah. She told me to load up two used
19 mattresses that we had picked up from a lady on 51 and take
20 them to ah, behind the tractor place right here on 51 and
21 put 'em in the warehouse. She told me when I got done loaded
22 them, pull around to the Coast to Coast. He had six
23 batteries that her husband was gonna get for a tractor or
24 somethin, tractor batteries. Anyway, I pulled around there
25 and loaded them up. I pulled off. Three of them fell off.
26 So when I got back around there, I told her what happened.
27 She called around there. He told her to bring 'em back so he
28 could see if he could get some kind of a deal on them. And
29 ah, evidently he couldn't or somethin. She told me ah, well,

1 she said you're responsible for the batteries. You should
2 have tied them down. And if they can't do anything, you have
3 to pay for them out of your check. That was it, and she sent
4 me ah, on up there to put her mattresses in the warehouse and
5 sent me to Carrollton to take her mattresses.

6 Question: What did you, did you pick up some more
7 batteries and take them around?

8 Answer: No. She just told me, the ones I dropped,
9 I picked them up and put them back on the truck. When I got
10 back around there, they took them off.

11 Question: All right. This was the third? July
12 the 3rd?

13 Answer: I guess.

14 Question: Okay. And ah, July the 4th was a
15 holiday, and y'all didn't open that day?"

16 The answer was inaudible.

17 Question: "And you suppose to go that Friday?

18 Answer: That Friday.

19 Question: Was July the 5th?

20 Answer: Yes, sir.

21 Question: And, and.

22 Answer: I didn't go.

23 Question: You didn't go? Did you call in?

24 Answer: I called in Friday.

25 Question: I didn't call Saturday."

26 Answer: [sic] "You was supposed to work that
27 Friday.

28 Answer: And Saturday.

29 Question: And Saturday?

1 Answer: Mhmm.

2 Question: The sixth? All right. When did you
3 find out that they had terminated you?

4 Answer: Uh, Tuesday. Tuesday that next week.

5 Question: You didn't go to work Monday either?"

6 If he responded, there was a silent response.

7 Question: "Did you even call in?

8 Answer: Uhmm. And then that Tuesday, I got up, I
9 was gonna go. When I got to my mama's house, I called. And
10 I asked her. Did Mike come back to work. She said, "No." I
11 asked her did I still have a job. She said, no. I said, did
12 I get a one day ah, pay check. She told me uh, my check was
13 pretty much covered up for them batteries. That was it.

14 Question: I understand that ah, before you got off
15 on the 3rd, that she loaned you some money. Thirty dollars.

16 Question: Thirty dollars?

17 Answer: Mhmm.

18 Question: Did you have to pay that thirty dollars
19 back?

20 Answer: She told my check, she told my check was
21 used up and that was it. She told me I could pay the thirty
22 dollars back out of my check when she gave it to me. When I
23 called her, she said well, my check was used up.

24 Question: Have you been back" in "the store since
25 that time?

26 Answer: No, sir.

27 Question: Have you been working anywhere since
28 that time?

29 Answer: Nothin more than mowing yards and working

1 on cars and stuff like that.

2 Answer: [sic] Do you own a car?"

3 Excuse me. Question: "Do you own a car?"

4 Answer: Yes, sir. A Nissan pickup.

5 Question: You were telling me something ah, the
6 other day about that car. It had some kind of mechanical
7 problems.

8 Answer: Yeah, I need a head for it.

9 Question: A heater?

10 Answer: A head.

11 Question: A head? So it's not running at this
12 time?

13 Answer: No, sir. I'm in my sister's car now.

14 Answer: [sic] When...d..wen...ah...how long is
15 it?

16 Answer: Mmmm...it's been about two and a half
17 months now.

18 Question: So you hadn't had a vehicle for two and
19 a half months?

20 Answer: M-mumm.

21 Question: When did you find out that ah, Mrs.
22 Tardy and ah, her employees about the incident that happened
23 down there Tuesday?

24 Answer: When I got down here.

25 Question: Yeah?

26 Answer: Mhmmm.

27 Question: In other words sometime around uh...

28 Answer: After ah, twelve or somethin.

29 Question: Yeah, sometime between twelve and one?

1 And we talked to you about 1:30?

2 Answer: Mhmm.

3 Question: That's the first you knew about it?

4 Answer: Yeah.... I stopped back by the store on"
5 my "way home, and then my daddy told me."

6 BY MR. LUMUMBA: Excuse me, Judge. "Yeah.
7 And I stopped back by the store." In other words,
8 he inadvertently forgot to put the "and" in that
9 sentence.

10 BY MR. EVANS: Your Honor, may he be allowed
11 to continue? If he wants to cross him on it, he
12 fully can.

13 BY THE COURT: Okay. He needs to be careful
14 about reading it like it is though.

15 BY THE WITNESS: Yes, sir.

16 BY THE COURT: Did you reread that, Mr.
17 Matthews.

18 BY THE WITNESS: Okay.

19 A. Answer: "Yeah. And I stopped...by the store on"
20 my "way home and then my daddy told me.

21 Question: What did you, what, what were the
22 activities on that Tuesday?

23 Answer: Tuesday?

24 Question: This past Tuesday?

25 Answer: Tuesday. Baby sittin.

26 Answer: [sic] Just give me a run down as to what
27 you did that day.

28 Answer: I baby sittin my girlfriend's kids. I
29 left the house twice. I went over to my sister's house, who

1 stayed right there on the next street and I went to Jeff's
2 store.

3 Question: Where?

4 Answer: Jeff's store, right down 51. Down to
5 Troy's.

6 Answer: [sic] All right ah, what time did you get
7 up that morning?

8 Answer: Oooh...somewhere between, probably 9:30,
9 somethin till 10:00."

10 Answer: [sic] "Okay. And you baby sittid your
11 girlfriend's children?

12 Answer: Inaudible.

13 Question: Inaudible.

14 Answer: She got two right now, I'm staying with
15 her."

16 Answer: [sic] "How old are they?

17 Answer: Oooh...one of them two and the other one,
18 I thank eleven.

19 Question: Boy or girl.

20 Answer: Boy. Boy eleven and the girl is two.

21 Question: Two. Okay. ...What time did you get up
22 that morning?

23 Answer: About 9:30 or somethin till 10:00.

24 Question: You were there at the house with the
25 children?

26 Answer: Mhmm.

27 Question: Until about 9:30 or a quarter till ten.

28 Answer: Naw, I got up at 9:30 or somethin till
29 ten.

1 Question: Were the kids there at the house when
2 you got up?

3 Mhmm. Yeah."

4 Answer-- excuse me. Question: "Okay. Where was
5 your girlfriend?

6 Answer: At work. Richardson Brothers.

7 Question: What time did she go to work?

8 Answer: Seven.

9 Question: Did you, you didn't get up before she
10 left?

11 Answer: No.

12 Question. She just got up and...

13 Answer: I always just tell her bye and keeps
14 staying there in the bed."

15 A. Now you want me to indicate the questions that
16 Officer Miller asked her.

17 Q. Right. Questions any other officer asked.

18 A. This is a question by Officer Miller. "During that
19 period of time, did you talk to anyone on the telephone?

20 Answer: No, sir.

21 Miller: Did you have a telephone?

22 Answer: No, sir.

23 Miller's Question: That's not one at your
24 girlfriend's house?

25 Answer: Inaudible.

26 Question: At what time did you go to your
27 sister's?

28 Answer: About eleven. Twelve something.

29 Inaudible.

1 Question: And you indicated that you went to ah,
2 the store.

3 Answer: Yeah, that was like...

4 Question: What was the name of that store?

5 Answer: Kelly's Stop and Go.

6 Question: Kelly's Stop and Go. That's on US 51?

7 Answer: Uh-huh. South.

8 Question: What time did you go to the store?

9 Answer: Mmmm...it was about...I imagine about
10 12:30, 12:45, something in there.

11 Question: After you went to your sister's?

12 Answer: Yeah, I went and got a...went and got a
13 six pack and ah, bag of chips, pack of cigarettes and that's
14 it.

15 Question: Is that right before" you-- correction.
16 Let me repeat that question. "Is that right before they,
17 they picked you up to come down here?

18 Answer: Yeah, I was drinking then. Yeah. I had
19 just opened a beer when Kenneth knocked on the door.

20 Miller's Question: Where did you get the money to
21 buy the beer - Inaudible?

22 Answer: Oh, I get unemployment.

23 Miller: You get unemployment, when do you get your
24 check?

25 Answer: It comes in on Wednesday, this was
26 Tuesday. Yeah. I still had money from the week before
27 that.

28 Miller: What was your unemployment check?"

29 Answer: That was it. "One nineteen.

1 Miller: One nineteen?

2 Answer: Mhmm.

3 Miller: Was that your first unemployment check?

4 Answer: That was my third one. Last week was ah,
5 that...this week was the only week I didn't get an
6 unemployment check.

7 Miller: Cause you working.

8 Answer: Mhmm.

9 Question: Okay. You got up around 9:30 that
10 morning?

11 Answer: Mhmm.

12 Question: All right. And you stayed there at your
13 girlfriend's apartment. Where does she live, and what's the
14 address?

15 Answer: 7028 McNutt Drive.

16 Question: Did you, you didn't go anywhere until
17 you went, your sister's house was the first place that you
18 went?

19 Answer: First place I went.

20 Question: Okay, so you stayed there at the house
21 from the time you got up at 9:30?

22 Answer: I couldn't-- inaudible.

23 Question: Until about" that "time that you went to
24 your sister's?

25 Answer: It was about noon, about dinner, right in
26 there."

27 Answer-- excuse me. Question: "Okay. And you
28 stayed over there for how long?

29 Answer: About fifteen minutes.

1 Question: Where does she live in relationship to
2 your apartment that you and your girlfriend stay?

3 Answer: My girlfriend stay on McNutt Drive and she
4 stay on Dennis Street, which is next street over" --
5 correction; "which is the next street over.

6 Question: How, how far is that?

7 Answer: Well, walking around the street it about a
8 mile path go straight up between two apartment houses to our
9 house.

10 Question: How long does it take you to get
11 there?

12 Answer: About five minutes.

13 Miller's Question: Where was the two year old when
14 you were over at your sister's house?

15 Answer: Up at their" grandma--"at their grandmama.

16 Question: Huh?

17 Answer: Up to their grandmama.

18 Miller's Question: Did you take them over there?

19 Answer: Humm?

20 Answer: No, sir." We just sit them over the, we
21 just-- correction. (NOTE: Witness takes a drink of water.)

22 Question [sic]: "No, sir. We always just send
23 them over the hill. Cause her grandmama stay behind her.
24 You just go over the hill to the street and all you do is
25 cross. So you know."

26 Miller's Question: And you keep-- "And you were
27 keeping the children?

28 Answer: Yes, sir.

29 But when you went to your sister's house, who kept

1 the children?

2 Answer: Their grandmother."

3 Miller's Question: Did you come over to the
4 house? Correction-- "Did she come over to the house?

5 Answer: No, I sent them over there.

6 Miller's Question: You sent them over to the
7 grandmother's house?

8 Answer: Mhmm. Sure did, cause" I just "left my
9 sister's house to come back by the house, cut through behind
10 the house and went to Jeff's.

11 Question: You were at Jeff's at some time around
12 what time?

13 Answer: About 12:45, inaudible.

14 Question: You bought a six pack of beer?

15 Answer: Six pack of beer, ah, pack of cigarettes,
16 and two bags of chip.

17 Question: And that was on Tuesday?

18 Answer: Mhmm.

19 Question: The same day as when you came here to
20 talk with us. Where did you go when you left the store?

21 Answer: To" my "house.

22 Question: Back to the apartment?

23 Answer: Mhmm.

24 Question: Okay. Was anybody there when you got
25 back there?

26 Answer: Nope. When I come across the school
27 campus, up the street, like...inaudible...standing in the
28 yard. I walked to the edge of the hill and told them good
29 morning, and we all went to the house together.

1 Question: You didn't go anywhere that morning
2 except to your sister's, and what is your sister's name?

3 Answer: Priscilla.

4 Question: Priscilla? And she lives on what
5 street?

6 Answer: Dennis Street.

7 Question: Dennis street? Took you about five
8 minutes from your apartment to her house?

9 Answer: About five minutes. Mhmmm.

10 Question: You stayed there what?

11 Answer: About fifteen" or "twenty minutes."

12 Correction-- "About fifteen, twenty minutes.

13 Question: You left there going to?

14 Answer: Kelly's Stop and Go.

15 Question: Kelly's Stop and Go, and you didn't go
16 by your apartment?

17 Answer: Yeah, I cut across, I had to go through
18 there. I gotta go the path. The path go behind the house.

19 Question: Well," you didn't go to "your apartment
20 or did you just...?

21 Answer: No, I didn't go in" it. "Mhmmm.

22 Question: And on to the store?

23 Answer: On to the store.

24 Question: And you got your beer, cigarettes and
25 potato chips?

26 Answer: Come back.

27 And came back, inaudible.

28 Answer: And" you "got the kids from top of the
29 hill and went back to the house."

1 Answer [sic]: "Okay. So you stopped at" your
2 "grandmothers and got them?"

3 Answer: No, sir. From where their grandmama stay
4 and I stay, my girlfriend stay, you can see all across
5 there. When I come across the school campus, got on Pile
6 Street and crossed over the hill, they could see me. We met
7 up at the top of the hill and come to the house.

8 Question: So if anybody sa...says they saw you" at
9 "any other place but your apartment or your sister's house
10 or Kelly Store...

11 Answer: Kelly Store.

12 Question: ...or walking in between those places,
13 then that wouldn't be the truth?

14 Answer: Walking between" Kelly's--"between Kelly,
15 my" sister "and my sister's house.

16 Question: Right. If they saw you any other place
17 other than those places?"

18 BY MR. LUMUMBA: Excuse me, Judge. I'm sure
19 he didn't mean to do it, but that line was "Walking
20 between Kelly, my house and my sister's house."

21 BY THE COURT: Okay, you might rephrase that.
22 But now this is an exhibit. The jury is going to
23 get the whole thing too.

24 BY MR. LUMUMBA: I understand, but I figured
25 he didn't mean--

26 BY THE COURT: Right.

27 BY MR. EVANS:

28 Q. You can continue, Mr. Matthews.

29 A. Where is that now? Do you want me to reread that?

1 **BY THE COURT:** Reread the one, reread that
2 one.

3 BY MR. EVANS:

4 Q. Start back with the line, "Or walking in between" -
5 let's see. "Walking between Kelly, my house and my sister's
6 house."

7 A. The question or the answer? Okay, the question.
8 All right.

9 Question: (Flowers talking.) "Walking between
10 Kelly, my house and my sister's house."

11 Answer [sic]: "Right. If they saw you any other
12 place other than those places?

13 Answer: Oh yeah, oh yeah, he a lie.

14 Question: That'd be a lie?

15 Answer: Mhmmm.

16 Question: Okay.

17 Answer: Sure would.

18 Question: Can you think back, is there any other
19 place you went or anybody you talked to during that time?"

20 Answer: Someone clears their throat. "Didn't go
21 nowhere else.

22 Question: Who was at your sister's house when you
23 got there?

24 Answer: LaToya Hardy. That's my cousin.

25 Question: She's your cousin.

26 Answer: She's staying with my sister.

27 Question: You, you said your, your girlfriend
28 didn't have a telephone?

29 Answer: No, she don't."

1 Answer [sic]: "Does her mother have a phone?

2 Answer: Yes, she has a phone.

3 Question: Okay. You didn't use it?

4 Answer: Uhmmm. She don't even like me.

5 Question: How long...what are your girlfriend's
6 hours?

7 Answer: Uh, they were suppose to work 7:00 to
8 3:30. Sometime they work 7:00 to 5:30.

9 Question: So she was at work. Does she come home
10 for lunch?

11 Answer: No.

12 Question: She, when she goes to work at 7:00,
13 she's usually there till 3:30 or 5:30?

14 Answer: Or 5:30.

15 Question: You didn't see her until later that
16 afternoon?

17 Answer: When she got there, Mrs. Vanhorn was
18 pulling up.

19 Question: That's who you caught a ride from here
20 with Mrs. Vanhorn?

21 Answer: Uh-huh." Correction. "Uh-huh. I walked
22 home.

23 Question: Oh. From here?

24 Answer: Uh-huh.

25 Question: Do you have any more questions?

26 Miller:" Asking the question. "Yeah. When you
27 went to work that day, who hired you?

28 Answer: Ah, Mr. Tardy.

29 Miller's Question: Mr. Tardy.

1 Answer: Mhmm.

2 Miller's Question: Who referred you to that job?

3 Answer: Ah, Mike, Mike Martin.

4 Miller: Mike?

5 Answer: Mhmm.

6 Miller's Question: And Mike's the one that quite?

7 Answer: Yeah. Going to truck driver school."

8 Can I take a little break right here just for a

9 minute?

10 BY MR. EVANS: May he, Your Honor?

11 (Pause while State's Counsel confer.)

12 BY THE COURT: Are you ready, Mr. Matthews?

13 BY THE WITNESS: Yes, sir.

14 A. Miller's question: "Did she hire you the same day
15 that you went to work?

16 Answer: No. I went down on that Friday evening
17 and she told me that I could come back Saturday morning.

18 Miller: Saturday morning?

19 Answer: Mhmm.

20 Miller: Did you and Mrs. Tardy have any
21 problems?

22 Answer: No.

23 Miller: I mean we know about the batteries,
24 inaudible.

25 Answer: No, sir. Other than that we didn't have
26 no problems. We didn't argue about that, you know. She
27 talked to me and she told me. I understood, cause I should'a
28 tied them down, you know.

29 Miller: How much was your check that you had

1 coming?"

2 Question-- correction. Answer: "I don't know.
3 She was paying me five dollars an hour.

4 Miller: How many hours did you have?

5 Answer: Saturday, Monday, Tuesday, Wednesday.

6 Miller: You never actually drew a paycheck?

7 Answer: No, sir. I didn't get that check,
8 cause...

9 Miller: How many hours did you work on,
10 inaudible.

11 Answer: ...told me...

12 Question from Miller: Work on seven?

13 Answer: Uh, seven, from nine to five.

14 Miller: What did you do on Monday?

15 Answer: Monday?"

16 Correction. Question: Monday? Excuse me just a
17 minute. That was the answer was Monday.

18 Question: "That would have been the first.

19 Answer: M-m-mum. I think I came in that day. If
20 I came in, I worked seven hours.

21 Miller: And then Tuesday?

22 Answer: Tuesday, I worked seven.

23 Miller: You got off at noon time, inaudible.

24 Answer: Inaudible, Wednesday.

25 Question, Miller's Question: We're talking about
26 26 hours?

27 Answer: Yeah, somethin like that. I" didn't
28 "know.

29 Miller: So your check you had coming was running a

1 hundred dollars, or a little over?

2 Answer: Yes, sir. Somewhere in there about.

3 Miller: Inaudible. Uh, okay, and who fired you,
4 you said?

5 Answer: She didn't fire me. She just told me she
6 couldn't use me no more.

7 Miller: Just couldn't use you any more? But she
8 told you that your check had been used up?

9 Answer: Yeah.

10 Question: Did that surprise you when she told you
11 that?

12 Answer: No, sir. Cause she told me that same day
13 the, the same day the battery was dropped that ah, if they
14 didn't give her some kind of deal on it, whoever handled the
15 battery was responsible. That was it.

16 Miller: All right, ah, well did you have"
17 something "to say to her about that?

18 Answer: No, sir. She sent me to Carrollton."

19 Miller: Apparently he started to say something.

20 The Answer: "Inaudible. She said she was gone to
21 leave the store early, said if ah, if she" didn't "dare when
22 we got back to come over to her house and just bring the
23 key. But when we got back, she was right there in front of
24 the store. Her and her husband. Just coming out getting in
25 the car." There is somebody talking in the background during
26 that.

27 Miller: "All right. What day was it that you ah,
28 dropped the battery?

29 Answer: Wednesday.

1 Miller: It was Wednesday morning?

2 Answer: Mhmm.

3 Miller: What day was it you borrowed the thirty
4 dollars?

5 Answer: Wednesday before we left.

6 Miller: Which did you do first, borrow the money
7 or ah, drop the batteries?

8 Answer: Dropped the batteries.

9 Miller: First?

10 Answer: Mhmm.

11 Miller: And then she" just. "She still loaned you
12 thirty dollars?

13 Answer: When we got ready to go home. She said
14 have a happy fourth. She said, Curtis, you had the
15 trouble...inaudible pay first. She said, well, do you need
16 to borrow anything? I said, 'Yes, ma'am. I could use
17 thirty dollars.' And she gave me thirty dollars.

18 Miller: So there really was no big problem with
19 you and Mrs. Tardy?

20 Answer: No, sir. We didn't exchange no words.

21 Question: How did you get along with ah, Mrs.
22 Rigby?

23 Answer: Mrs. Rigby?

24 Question: The other lady, inaudible.

25 Answer: The secretary? Oh, me and her cleaned up
26 together.

27 Miller: All right." So "the fourth you took off
28 because it was a holiday?

29 Answer: Mhmm.

1 Miller: Who all did you see on the fourth? Who
2 were some of your buddies that you ran around with?

3 Answer: Oo-o-h...on the fourth? We had a big get
4 together at my house, my mother's house.

5 Miller: Name some of the people that was there.

6 Answer: Oh, Johnny Campbell, Roscoe Campbell, my
7 mother, my father. You need some more?

8 Miller: Yeah. I mean how many people are you
9 talking about?

10 Answer: Inaudible, the family.

11 Question, Miller's Question: The whole family,
12 large.

13 Question, Miller: Who outside the family?

14 Answer: Mmmmmm. I can't think of anybody outside
15 the family.

16 Miller: Well, what did you do on Saturday, I mean
17 Friday? You didn't go to work, so what did you do on
18 Friday?

19 Answer: Sat at the house.

20 Miller: By yourself?

21 Answer: Uhmm. My girlfriend, she was off too.

22 Miller: Did you argue with anybody, go any
23 place?

24 Answer: No.

25 Miller: What did you do on Saturday?

26 Answer: Back over to my mama's house. We sat
27 around and dranked out there on the picnic tables and stuff.

28 Miller: Some of the same people that was there?

29 Answer: My uncle, Johnny Calhoun, Roscoe, Roger

1 Campbell, uh, that's about it.

2 Miller: And then Sunday, you....

3 Answer: Nothin.

4 Miller: You didn't do anything too much? Did you
5 tell a lot of people the problems that you had had down here
6 about dropping the batteries and....

7 Answer: Mmmm, my ah, my girlfriend. Well, my
8 uncle and them, they saw it. Cause we was between the alley
9 over there at the alley over there at the Coast to Coast.
10 The front store."

11 Miller's question was inaudible.

12 The Answer: "Robert Campbell.

13 Miller: Robert?

14 Answer: He came to work on the weekends. Anyway,
15 ah, they was over there at the fish market over there. And
16 they was coming out of the parking lot when I was coming up
17 the alley.

18 Miller: And they saw the batteries spill?

19 Answer: Mhmmm.

20 Miller: But you didn't uh, did you have a lot to
21 say about the fact that ah, that they owed you some money?

22 Answer: No, sir." I don't know what that other
23 expression is.

24 Miller: "After you ah, was terminated?

25 Answer: No, sir. I ask was I suppose to be able
26 to receive a check and she told me remember we talked about
27 the battery? And I said, 'Yes, ma'am.' And she said, well
28 your check was used up. That was it.

29 Question: Did you know ah, about the store had

1 been broken into?"

2 Question [sic]: "Uh, Mr. Tardy told me about it.
3 Told me how they came in and everything. He said that ah,
4 come through the air shaft or something.

5 Question: Where did you see Mr. Tardy?

6 Answer: At the store when I was working."

7 Question: Was that "when... Inaudible?"

8 Answer: "I don't know. He just telling me about a
9 break in they had awhile back. That was the day I started.

10 Miller: That was the same day you started that he
11 was telling you about a break in?

12 Answer: Yeah. He was telling me about a break
13 in.

14 Miller: But didn't they have one while you were
15 working down there?"

16 Answer: I didn't know. She didn't bring it
17 up. "Cause you know, I never did go back to work. When I
18 called up there, she told me she couldn't use me no more. I
19 ask her did I have any paycheck coming and she told me
20 remember we talked about the battery. She said it was used
21 up. I said, okay. She said, sorry things didn't work out.
22 I told her okay. That was it.

23 Miller: And that was what day?

24 Answer: Uh, that Tuesday.

25 Miller: What Tuesday?

26 Answer: Uh, mmmm...I think it was the ninth, tenth,
27 I don't know.

28 Miller: After the first Tuesday after the fourth?

29 Flowers. Answer: Mhmm. Yeah.

1 Miller: So you didn't go to work that Monday
2 either?

3 Answer: Mmum. No, sir.

4 Miller: You didn't call her?

5 Answer: I called her Saturday, I called her Friday
6 and I called her Monday. And I didn't go in Tuesday, but
7 about eleven something Tuesday I called her. And I asked
8 her, did Mike come to work and she said naw. I asked her did
9 I still have a job and she said, well she couldn't use me
10 cause I missed too many days. I asked her did I have a
11 paycheck coming and she said, you remember we talked about
12 the battery, you used it up.

13 Miller: So that was on Tuesday?

14 Answer: Mhmm.

15 Miller: When did you call?

16 Answer: About eleven something.

17 Miller: You called her?

18 Answer: Mhmm.

19 Question: Have you had a lot" of people say --
20 correction; let me start over. "Have you had a lot to say to
21 different people about what happened...?"

22 Answer: "No, sir. Nobody but Mike. I told
23 Mike... to deliver the mattress. She called Mike to help
24 me. Me and Mike was going to Carrollton. I just told Mike
25 that man, she sent me around to Coast to Coast. And I got
26 some batteries and dropped them. She said either if Jimmy
27 don't give me some kind of a deal, I had to pay for them.
28 And he said no, you didn't man. You know to tie them down.
29 I said yeah, I knew it. I said I told em. Yeah, and that

1 was it.

2 Miller: What about ah, what kind of fellow is
3 Mike?

4 Answer: He a good guy.

5 Miller: Good guy?

6 Answer: Mhmm.

7 Question: Okay. If it would be all right with you
8 uh, we want when we leave here, we'll carry you back to your
9 girlfriend's house or either" anywhere "you want to go.

10 Answer: I got the car.

11 Question: Okay. Well," before we do that --
12 correction, let me start again. "Okay. Well, well, maybe
13 before we do that then, we want you to show us where you live
14 and where your sister lives.

15 Miller: We will bring you back.

16 Question: And we'll bring you back. Show us what
17 you did, the places you, that you went. Cause neither one of
18 us are from Winona and we, we're not familiar with you know,
19 exactly where you're talking about."

20 Answer: Uh-huh. Uh-huh. "All right."

21 "This concludes the interview with Curtis
22 Flowers. The time is 1525."

23 BY MR. EVANS:

24 Q. All right. And after that interview, did he, in
25 fact, take you and show you where he and his sister both
26 lived?

27 A. Yes, sir.

28 Q. Did you also have an occasion to talk with other
29 witnesses and take statements from them?

1 A. Yes, sir. We did.

2 Q. Did you also have an occasion or did you or did you
3 not have an occasion to have those witnesses show you
4 different locations around town?

5 A. Yes, sir. We did.

6 BY MR. EVANS: Your Honor, may I have this
7 exhibit marked for identification.

8 (OVERLAY OF STREETS OF WINONA WAS MARKED AS
9 STATE'S EXHIBIT S-70 FOR IDENTIFICATION.)

10 BY MR. EVANS:

11 Q. Mr. Matthews, I will hand you Exhibit 70 and ask
12 you if you can identify what this exhibit is?

13 A. This is a map of some of the area of Winona, the
14 City of Winona.

15 Q. And does that particular map show all the areas
16 that the Defendant took you to and other witnesses showed
17 you?

18 A. Yes, sir. It appears to.

19 BY MR. EVANS: Your Honor, I offer this
20 exhibit into evidence.

21 BY THE COURT: Any objection?

22 BY MR. LUMUMBA: No, sir.

23 BY THE COURT: Let it be marked.

24 BY MR. LUMUMBA: Could I just see it for a
25 minute though?

26 (OVERLAY OF STREETS OF WINONA PREVIOUSLY
27 MARKED AS STATE'S EXHIBIT S-70 FOR IDENTIFICATION
28 WAS NOW RECEIVED IN EVIDENCE.)

29 (Exhibit S-70 shown to Defense Counsel.)

1 BY MR. EVANS: Your Honor, may I have the
2 witness step down?

3 BY THE COURT: Okay. You want the lights
4 off?

5 BY MR. EVANS: Yes, sir.

6 (Exhibit S-70 was placed on the overhead
7 projector.)

8 BY MR. EVANS:

9 Q. Mr. Matthews, I hand you this pointer. If you
10 will, step to the side so that the jury can see. Would you
11 point out where Highway 51 is on that diagram?

12 A. This is Highway 51. It runs north and south
13 through Winona.

14 Q. All right. So point the direction that, the way
15 that is turned right now, which direction north is?

16 A. (Witness points.)

17 Q. You are pointing to the right hand side for the
18 record; is that correct?

19 A. Yes.

20 Q. Would you point out on that diagram where the
21 Defendant told you that he lived?

22 A. Right there at McNutt Street.

23 Q. All right, if you would, speak a little louder
24 because your back is turned to the jury.

25 A. Right there on McNutt. (Witness pointing.)

26 Q. All right, which side, east or west of Highway 51
27 is that located?

28 A. That's on the west side of 51.

29 Q. Would you point out where he told you the two

1 places that he told you he went on the 16th were.

2 A. He went to Dennis Street. And he also went to
3 Kelly's One Stop which is right there in this little place.

4 Q. And which side are both of those located on as far
5 as 51?

6 A. They are located on the west side.

7 Q. Okay. Are you familiar with a place where James
8 Kennedy stated that he saw the Defendant that day?

9 A. Yes, sir.

10 Q. Would you point out where he said that he showed
11 you that he saw him?

12 A. Right down in this area.

13 Q. And what is the name of that street?

14 A. I can't read that.

15 Q. Is it Donnager or Angelica Drive?

16 A. It's called Angelica Drive is what I have referred
17 to, but on the map it is Donnager.

18 Q. All right, and what side of Highway 51 is that
19 located on?

20 A. That's on the east side of 51.

21 Q. Would you point out for the ladies and gentlemen of
22 the jury on that diagram where Angelica is located?

23 A. It's going to be right in here.

24 Q. All right, now you need to speak a little bit
25 louder.

26 A. Will be right in here.

27 **BY THE COURT:** You need to speak up, Mr.

28 Matthews, because I can't hear you.

29 **BY THE WITNESS:**

1 A. It's right in this area right here.

2 **BY THE COURT:** There you go.

3 BY MR. EVANS:

4 Q. Would you point out where you were shown that
5 Katherine Snow saw the Defendant that morning?

6 A. Okay.

7 BY MR. LUMUMBA: Objection. He can point out
8 where the location that Katherine Snow said she saw
9 the Defendant, not where she did.

10 BY MR. EVANS: I believe that's what I asked.

11 BY MR. LUMUMBA: Well, it's a little
12 different, Judge. That's my objection.

13 **BY THE COURT:** Okay. Phrase the question-- I
14 think that would be the proper way. You may have
15 done that, but ask it that way.

16 BY MR. EVANS:

17 Q. Would you point out where Katherine Snow showed you
18 that she saw the Defendant that morning.

19 BY MR. LUMUMBA: Judge, just one other thing.

20 BY MR. EVANS: Just a minute.

21 BY MR. LUMUMBA: I'm assuming that the officer
22 actually was shown this himself. I noticed one of
23 the reports does not have his name on it, and I
24 just want to make sure he is not testifying from
25 somebody else's.

26 **BY THE COURT:** Okay, he has testified that
27 witnesses showed him different spots already. So I
28 assume that's what he is doing. If that is
29 incorrect--

1 BY MR. EVANS:

2 Q. If you would, point out again for me where James
3 Kennedy showed you that he saw the Defendant.

4 A. (Witness points.)

5 Q. All right. Hold it where you have got it just a
6 second. It's hard to see on this with the light. Is this
7 about right?

8 A. Yes, sir.

9 (NOTE: Mr. Evans puts a red dot on Exhibit S-70.)

10 Q. All right. Now if you would-- let me get out of
11 the way. Show us where Katherine Snow showed you that she
12 saw the Defendant.

13 A. In the parking lot of the Angelica factory.

14 Q. All right, hold what you have got.

15 (Mr. Evans puts another dot where witness is
16 pointing.)

17 Q. Next if you would, show us where Mr. McChristian
18 showed you that he saw the Defendant that morning?

19 A. Right here on Academy Street.

20 (Mr. Evans puts another red dot where witness
21 is pointing.)

22 Q. Next, if you would, show us where Mary Jeanette
23 Fleming showed you that she saw the Defendant that morning?

24 A. On Campbell Street.

25 Q. Right about this area?

26 A. No, that is Carrollton. Campbell. Right there.

27 Q. Okay, hold your marker. Let me find it.

28 (Mr. Evans marks and lets marker slip to make
29 a long mark.)

1 Q. Whoops. I knew I would do that sooner or later.
2 Next, if you would, show me where Charles Collins showed you
3 that he saw the Defendant that morning?

4 A. (Witness points.)

5 Q. Okay, hold your marker.

6 (Mr. Evans puts another dot where witness is
7 pointing.)

8 Q. And next show me where Clemmie Fleming showed you
9 that she saw the Defendant that morning?

10 A. (Witness points.)

11 Q. If I can get it going the right direction.

12 (Mr. Evans puts another dot where witness is
13 pointing.)

14 Q. All right, I want to go back. All of the locations
15 that those witnesses for the record showed you that they saw
16 the Defendant that morning are marked with red dots; is that
17 correct?

18 A. Yes.

19 Q. Now if you would, go back and I want you to get you
20 to show us where the Defendant told you he was that morning,
21 and I will mark these in blue.

22 A. (Witness points.)

23 Q. All right, hold what you have got.

24 (Mr. Evans marks in blue on Dennis Street.)

25 Q. All right, and the other location?

26 A. (Witness points.)

27 (Mr. Evans marks in blue on Highway 51.)

28 Q. It's kind of hard to follow this thing backwards.
29 Okay. What, if anything, did the Defendant tell you in the

1 interviews that you had with him about ever being on the east
2 side of Highway 51 on the day of the murders, that morning?

3 A. Okay. He said that he hadn't been on the east
4 side.

5 Q. Okay. If you would, take your seat again, please.

6 (Mr. Horan confers with Mr. Evans briefly.)

7 Q. Yeah, that's right; one more thing. If you would,
8 show me his residence again so that I can mark that.

9 A. On McNutt (Witness points.)

10 (Mr. Evans marks in blue on McNutt Drive.)

11 Q. Okay, Mr. Matthews, if you would have a seat
12 again.

13 A. (Witness resumes witness stand.)

14 BY MR. EVANS: Your Honor, may I pass this
15 exhibit to the jury while we continue?

16 BY THE COURT: It has been admitted. You can.

17 (Exhibit S-70 was passed to the jury.)

18 BY MR. EVANS:

19 Q. Mr. Matthews, when you went to the Defendant's
20 house, did you personally have an occasion to determine what
21 shoe sizes the children that lived in that house wore?

22 BY MR. LUMUMBA: Objection. Can we approach
23 the bench?

24 BY THE COURT: Yes.

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
26 THE JURY AS FOLLOWS:)

27 BY THE COURT: I did not hear the question.

28 BY MR. EVANS: The question was when you went
29 to the Defendant's house, did you have an occasion

1 to personally determine what shoe size the children
2 that lived in that house wore.

3 BY MR. LUMUMBA: Unless he measured them, I
4 object. If he is talking about or if he wants to
5 say I looked at them and based on my observations,
6 this is how big I think they were, I don't have any
7 problem with that. But if he is going to say
8 somebody told him, I object and then--

9 BY THE COURT: Well, if it is hearsay, it's
10 not admissible.

11 BY MR. LUMUMBA: It's insufficient foundation
12 at this point.

13 BY MR. EVANS: He can impeach them. I asked
14 him if he personally knew what size they wore--

15 BY MR. LUMUMBA: --well, suggests-- I'm sorry.

16 BY THE COURT: Well, and that is like the
17 question that we had yesterday. If it's his
18 personal knowledge, he can testify to it.

19 BY MR. LUMUMBA: Judge, but I think one
20 exception to that is when I challenge it for lack
21 of foundation, the reason being if he gets the
22 statement out, the hearsay statement out, the
23 damage is done. You can't cure it. So the only
24 thing I'm saying is all he has got to do is ask him
25 did you measure it or see it, or is your knowledge
26 based upon what somebody told you. And if it's
27 based upon what somebody told him, he can't get it
28 in.

29 BY THE COURT: There is some problem with the

1 witnesses not knowing what personal knowledge is
2 although I think this one probably does. Why don't
3 you frame it in that way as to how he would know
4 that because if it's hearsay, I'm not going to let
5 it in. So I would rephrase the question.

6 END BENCH CONFERENCE

7 BY MR. EVANS:

8 Q. Mr. Matthews, while you were at the Defendant's
9 house, was the Defendant there with you?

10 A. I don't remember whether he was there or not.

11 Q. Did you have an occasion to personally observe and
12 see what shoe sizes the children that lived in that house
13 wore?

14 A. The only one that I know that we checked was the 9
15 year old son. I believe his name was Lemarcus.

16 Q. All right, and what shoe size did Lemarcus wear?

17 A. He had on a 7 and a half the day we were there.

18 Q. Exhibit 62 that you had identified earlier, does it
19 also show on there -- what, if anything, does it show on
20 there in relationship to the thirty dollars that the
21 Defendant told you he had been given by Mrs. Tardy as a
22 loan?

23 A. Up here in the right corner it has the word "paid
24 \$30.00 cash" and it has got the date, 6-29.

25 Q. And how many hours does that time card show that he
26 had worked?

27 A. 17 and 11/12ths.

28 Q. I will also hand you Exhibit 63 and ask you who
29 that check was made payable to?

1 A. Curtis Flowers.

2 Q. For how many hours?

3 A. 17 and 11/12ths.

4 Q. And where did you find this check?

5 A. It was lying on Mrs. Tardy's desk.

6 Q. Okay. I will next hand you Exhibit 65 and ask you
7 when the first time you saw that exhibit was?

8 A. On the 16th of July of 1996.

9 Q. And according to that sheet, how much money should
10 have been in the store that morning?

11 BY MR. LUMUMBA: Judge, I think I have to
12 object to that. I think Ms. Ballard, who was
13 qualified as an expert on that subject, has
14 testified, but I don't know that the officer is an
15 expert on that subject.

16 BY MR. EVANS: Your Honor, the sheet is
17 already in evidence.

18 BY THE COURT: The sheet is in evidence. He
19 can testify as to what it says.

20 BY MR. LUMUMBA: Can I see it for a moment?
21 Maybe I am mistaken.

22 BY THE COURT: He can't testify as an expert.

23 BY MR. LUMUMBA: I don't know that it actually
24 says how much money was in the store.

25 (Pause while Mr. Lumumba looks at Exhibit
26 S-65.)

27 BY MR. LUMUMBA: Can I just show the Judge
28 what I'm talking about?

29 BY THE COURT: Uh-hum.

1 BY MR. LUMUMBA: I don't have any problem,
2 Judge, with him saying what the sheet says. But
3 the problem I have it doesn't say that the money is
4 in the store. Nothing in there--

5 BY THE COURT: He can testify as to what is on
6 that sheet; that's what I'm saying.

7 END BENCH CONFERENCE.

8 BY MR. LUMUMBA: Okay, Judge, my objection is
9 to what is on the sheet. I have none, I just-- it
10 doesn't say on here that, it doesn't say here
11 anything where there is money in the store.

12 BY THE COURT: I understand, and I note your
13 objection, and that is sustained as to that. He is
14 entitled to testify as to what that sheet says.

15 BY MR. LUMUMBA: Right. I have no problem
16 with that.

17 (Exhibit S-65 handed back to the witness.)

18 BY MR. EVANS: Waiting on you to sit down.

19 BY MR. EVANS:

20 Q. May I see the exhibit, Mr. Matthews? Under petty
21 cash where it says "Cash on hand," what does this form say?

22 A. \$300.00.

23 Q. And is there also a minus amount shown on there?

24 A. Yes, sir. It's under "List of cash," it has got
25 minus \$100.00.

26 Q. Did you have an occasion to search that money
27 drawer and the rest of the store that day?

28 A. Yes, sir. We did.

29 Q. Was any, were any bills of any denomination found

1 in that store in either cash drawer, safe, on the counter,
2 any money that appeared to belong to the store?

3 A. We didn't find any bills.

4 Q. And I believe you did find a little change in the
5 cash drawer; is that correct?

6 A. That's correct.

7 Q. The rest of the money was not there that is shown
8 on that form?

9 A. Yes, sir.

10 (Exhibit S-65 was passed to the jury.)

11 BY MR. EVANS: Ready?

12 BY THE COURT: Uh-hum.

13 BY MR. EVANS:

14 Q. When you went with Doyle Simpson to his mother's
15 house, why did you go there?

16 A. A day or two prior to me going, Montgomery Deputy
17 Bill Thornburg had gone there, and we had talked to Doyle
18 about his, the weapon that he had that was missing from his
19 car on the 16th-- that he reported on the 16th. And during
20 our conversation with him, we had talked to him about had he
21 done any target shooting or any firing of that weapon
22 anywhere else where we might be able to retrieve either some
23 hulls or some projectiles from that gun.

24 Q. All right, and explain to the ladies and gentlemen
25 of the jury why you wanted to know exactly what kind of
26 bullet was fired out of that gun that he reported missing?

27 A. Okay. On the day of the 16th, the hulls that were
28 found in the furniture store at Tardy Furniture were .380
29 hulls. Shortly after I arrived in Winona that day, the

1 Winona Police Department got some information that Doyle
2 Simpson reported his gun missing from his car at the Angelica
3 factory. When we got out there and talked with Mr. Simpson,
4 he indicated that that gun was a .380 caliber gun. And we
5 just thought that because of the murders that happened that
6 day and his gun missing, that they might be connected to the
7 crime that we had. And we wanted to make comparisons from
8 his gun with the hulls and the projectiles that we had at the
9 scene.

10 Q. And that was the purpose of recovering the bullets
11 that Doyle had test fired into the post?

12 A. That's correct.

13 Q. And did you see to it that the State Crime Lab
14 compared those bullets that had been test fired out of
15 Doyle's known gun with the bullets that were recovered from
16 the murder scene?

17 A. Yes, I did.

18 BY THE COURT: Are you going to be a while?

19 BY MR. EVANS: Yes, sir.

20 BY THE COURT: Okay, the jury has indicated
21 they want to take a break, and I'm going to do that
22 right now.

23 BY MR. EVANS: Yes, sir.

24 BY THE COURT: Okay. I want the see the two
25 of you up here just a second.

26 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
27 THE JURY AS THEY WERE LEAVING THE COURTROOM AS
28 FOLLOWS:)

29 BY THE COURT: I don't care whether this is on

1 the record or not.

2 BY MR. LUMUMBA: I want mine on the record.

3 BY THE COURT: Okay, let me talk first because
4 I'm going to be short. He is entitled to represent
5 his client now, and he is entitled to do that. He
6 has got to make whatever objections he thinks is
7 necessary, and I don't want any more comments about
8 his objections. I will make the rulings on that.
9 Well, you are making some-- well, you are making
10 some asides when he objects, and I don't want that
11 in this trial.

12 BY MR. EVANS: Your Honor, and I understand
13 and I appreciate that. The only thing that I know
14 of that I did, I am tired of him constantly
15 standing up looking over my shoulder when I'm
16 talking. My only comment that I made was I wanted
17 him to sit down before I continued.

18 BY THE COURT: Yes, but there has been a
19 couple of other things, and I'm not trying to make
20 a major issue out of it. I am just trying to
21 explain to everybody that it's a question and
22 answer method, and it's also objections method that
23 I get to rule and then we get to move forward, and
24 that's the way I want it to go.

25 BY MR. EVANS: I appreciate that, and if I
26 did, I apologize to the Court.

27 BY THE COURT: Well, I'm not looking for any
28 apology from anybody. I just want to keep it on
29 line, okay. Now you want this on the record?

1 BY MR. LUMUMBA: Yeah, this is on the record.
2 I'm just going to explain that I did have
3 objections, and I have raised them earlier about
4 police officers testifying to hearsay about Doyle
5 Simpson's reports of guns, you know, that remember
6 he reported his gun stolen earlier in the trial?

7 BY THE COURT: Oh, yeah. Yeah.

8 BY MR. LUMUMBA: So I just wanted to point out
9 for the record that my objection continues through
10 the officer's testimony.

11 BY THE COURT: I understood it that way.

12 BY MR. LUMUMBA: I just didn't want to keep
13 jumping up. Okay, but the other thing is I also
14 object as prosecutorial misconduct of Mr. Evans
15 consistent kind of tell the jury, you know, that my
16 objections are annoying. I don't really relish
17 objecting in a lot of cases, but I do believe that
18 this is a case where I have to protect my record.
19 I do believe there has been a lot of leading. I
20 think there has been a lot of hearsay, and I am
21 really just trying to keep up with it, and that's
22 basically what it is.

23 BY THE COURT: Well, that is the point of what
24 I have said up here, and that's-- I hope I have
25 addressed that.

26 BY MR. LUMUMBA: I think so.

27 (FOLLOWING THE MORNING RECESS ON MARCH 27,
28 1999, PROCEEDINGS CONTINUED IN OPEN COURT WITH THE
29 COURT, ALL COUNSEL, THE DEFENDANT, AND THE JURY ALL

1 PRESENT AND WITH **JACK MATTHEWS** STILL ON THE WITNESS
2 STAND:)

3 **BY THE COURT:** You may proceed.

4 BY MR. EVANS: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION BY MR. EVANS:

6 Q. Mr. Matthews, I will hand you Exhibit 69 and ask
7 you if you would take this exhibit and see if you can
8 identify what it is?

9 A. Do you want me to open it?

10 Q. At this point see if you can identify it from the
11 package?

12 A. This is a Sunburst Bank bag that we found in Tardy
13 Furniture, along with the deposit book.

14 Q. And did you place those in a bag and seal them?

15 A. Yes, sir. I did.

16 BY MR. EVANS: Your Honor, I offer this
17 exhibit into evidence at this time.

18 **BY THE COURT:** Have you seen it?

19 BY MR. LUMUMBA: I probably have at some
20 point, Judge. I don't know if I can tell
21 definitely by looking at it.

22 **BY THE COURT:** Do you want to look at it
23 again?

24 BY MR. LUMUMBA: I don't want to take a lot of
25 time. Can I just tear it?

26 BY MR. EVANS: Yeah. May the record reflect
27 that we are opening the exhibit at this time.

28 **BY THE COURT:** The record will reflect. Let
29 the record reflect you are trying to.

1 (Laughter.)

2 BY MR. LUMUMBA: Judge, I don't want to just
3 tear it.

4 BY THE COURT: Here you go.

5 BY MR. LUMUMBA: Judge, you don't have a knife
6 on you, do you?

7 BY THE COURT: Yeah, concealed weapon.

8 (Mr. Lumumba opens the sack and looks at the
9 bag.)

10 BY MR. EVANS: You can take them out if you
11 would like to.

12 BY MR. LUMUMBA: Yeah, let me take them out.
13 Feels like something. (Opens bag.) Is this part of
14 your exhibit?

15 BY MR. EVANS: That's the deposit book.

16 BY MR. LUMUMBA: We have no objection to that
17 exhibit.

18 BY THE COURT: Do you want that marked as a
19 cumulative exhibit, or do you want those things
20 inside marked separately?

21 BY MR. EVANS: It will be fine just to mark as
22 a cumulative exhibit, Your Honor.

23 BY THE COURT: Okay.

24 (BROWN BAG CONTAINING GRAY MONEY BAG WITH
25 RECEIPT BOOK PREVIOUSLY MARKED AS EXHIBIT S-69 FOR
26 IDENTIFICATION WAS NOW RECEIVED IN EVIDENCE.)

27 BY MR. EVANS:

28 Q. All right, Mr. Matthews, let me hand you Exhibit 69
29 back, and I will ask you if you would remove the contents

1 from the package?

2 A. (Witness complies.)

3 Q. All right, what is that exhibit?

4 A. This is a Sunburst Bank bag that we found in Tardy
5 Furniture Company.

6 Q. All right, and what is the other exhibit that is
7 there with it or the other part of that exhibit?

8 A. It's a Union Planters with deposit slips.

9 Q. May I see it for a moment, please.

10 A. (Exhibit handed to Counsel.)

11 BY MR. EVANS: Your Honor, may I have the
12 witness step down, please?

13 BY THE COURT: Yes.

14 BY MR. EVANS:

15 Q. Mr. Matthews, the \$1238.86 that is shown on the
16 check up sheet that has been described; do you see this
17 amount?

18 A. Yes.

19 Q. Is there a deposit ticket in this book that shows
20 that deposit?

21 A. Yes, it is.

22 BY MR. EVANS: Your Honor, may I pass this to
23 the jury?

24 BY THE COURT: It has been admitted. You can
25 do so.

26 (Exhibit S-69 and S-65 were passed to the
27 jury.)

28 BY MR. EVANS:

29 Q. Mr. Matthews, other than that deposit book, was

1 there any money in the money bag?

2 A. No, sir. It was not.

3 Q. Now since the ladies and gentlemen of the jury are
4 not familiar with downtown Winona, would you describe the
5 area around Tardy Furniture as far as-- what I'm asking is
6 the type of buildings that are there, how close other
7 occupied buildings are or things like that?

8 A. Okay. Tardy Furniture Company is located in
9 downtown Winona. It's on Front Street. It's about a two
10 block street that faces the railroad that runs north and
11 south through the Town of Winona. Front Street is a rather
12 large street with traffic going both ways, and inside the
13 traffic there are some islands out there where you can park
14 your cars from both north and south lanes. Across the street
15 is an old depot that has been converted into another
16 building. Tardy Furniture Company is located on the south
17 end of Front Street. It's on the west side facing east.
18 There is a cleaners that is located just across the street
19 from them to the south of them that probably is within
20 probably 40 or 50 yards of the front door of Tardy
21 Furniture. There is also an old converted service station
22 that used to stand right there at the corner, and it, in
23 1996, and I don't know whether it's still there today, but
24 there was in that building had been converted and there was a
25 home health agency over there that was doing home health
26 business at the time.

27 Q. All right.

28 A. Located to the north of Tardy was a vacant building
29 and then, or a vacant building next to them. Then there was

1 a little alley that runs between the buildings, and next to
2 that was a Coast to Coast hardware store.

3 Q. So there is actually no building on the south side
4 or the north side of the store that was occupied?

5 A. No, sir. There is no building on the south side of
6 the street.

7 Q. And on the east side, there is nothing until you go
8 all the way across to the railroad track; is that correct?

9 A. That's correct.

10 Q. And then there is an alley behind the building; is
11 that right?

12 A. That's correct.

13 Q. During your investigation at the scene on the 16th,
14 did you have an occasion to talk with Frank Ballard?

15 A. Yes, I did.

16 Q. Did you have an occasion with Frank Ballard to
17 check certain things in the store?

18 A. Yes, we did.

19 Q. Did you have an occasion to personally check the
20 cash register printout to see if there had been any
21 transactions that day?

22 A. Yes, we did.

23 Q. Had there been any transactions?

24 A. No, sir. There had not been.

25 Q. (Clears throat.) Excuse me. Did you have an
26 occasion or what, if anything, did you do at Curtis Flowers'
27 house in relationship to looking for any money?

28 A. We searched the room that he and his girlfriend
29 reside in.

1 BY MR. LUMUMBA: I have just that same
2 continuing objection to that.

3 BY THE COURT: All right. Objection noted.

4 BY MR. EVANS:

5 Q. You may continue.

6 A. And she was present while we did that. In the
7 headboard of that bed there was some money located by
8 Investigator H. W. Miller.

9 Q. How much money was that?

10 A. It was \$255.00.

11 Q. Also during the course of your investigation, at
12 some point because of his gun being suspected as being used
13 as the murder weapon, was Doyle Simpson a suspect?

14 A. We talked to him also on the 16th of July and to
15 his relationship as to where he was at the time.

16 Q. All right, were you able to eliminate him as a
17 suspect?

18 A. Yes, we were.

19 Q. And at some point was also Emmitt Simpson
20 interviewed?

21 A. Yes. He was.

22 Q. Were you also able to eliminate him as a suspect?

23 A. Yes, sir. We did.

24 Q. Now I believe you also talked with the Defendant on
25 July the 23rd. Is that correct?

26 A. That's correct.

27 Q. On that date what, if anything, did he tell you
28 about being at Angelica factory on the morning of July the
29 16th, the date of these murders?

1 A. He said that he had not been there.

2 Q. At any time that morning?

3 A. At any time.

4 Q. At all of the times that you talked with the
5 Defendant, what was his appearance as far as wearing or not
6 wearing glasses?

7 A. He didn't have on any glasses when I interviewed
8 him.

9 Q. At any of the times that you saw him?

10 A. No, sir.

11 Q. Now we have covered the fact on the gunshot residue
12 that you had no physical contact with the Defendant and that
13 you washed your hands. In your presence did anyone else have
14 any physical contact with the Defendant on that morning?

15 A. Not that I know of.

16 Q. Of the different statements that the Defendant gave
17 you, as far as inconsistencies, in one statement I believe he
18 told you he got up at 6:30; is that correct?

19 A. That's correct.

20 Q. In the next statement he told you he didn't get
21 up--

22 BY MR. LUMUMBA: Leading question.

23 BY THE COURT: It is. Sustained.

24 BY MR. EVANS: I'm sorry, Your Honor.

25 BY MR. EVANS:

26 Q. In the next statement what time did he tell you he
27 got up?

28 A. It was around 9 o'clock.

29 Q. I believe if the statement showed that he said 9:30

1 or 10:00, would that be right?

2 A. Yes, sir. I believe so.

3 Q. But in either statement or any of the statements
4 that the Defendant gave you, what, if anything, did he ever
5 tell you about ever being on the east side of Highway 51 on
6 the morning of the 16th?

7 A. He said he had never, he was not over there at any
8 time.

9 BY MR. EVANS: The Court's indulgence for just
10 a moment.

11 (State's Counsel confer briefly.)

12 BY MR. EVANS: Tender the witness, Your Honor.

13 BY MR. LUMUMBA: Good morning.

14 BY THE JURY: Good morning.

15 CROSS-EXAMINATION BY MR. LUMUMBA:

16 Q. Good morning, Investigator Matthews. Good
17 morning.

18 A. Good morning.

19 Q. Good morning. Investigator Matthews, let me ask
20 you just a few questions. I want to go back to that map in a
21 minute, but before we do that, you have indicated that at one
22 point you had-- you mentioned Doyle Simpson's name. Is
23 that-- you did meet and talk to Doyle Simpson; is that
24 correct?

25 A. Yes, sir.

26 Q. Okay, and you actually talked to him on the 16th at
27 the police station; is that correct?

28 A. Yes, sir.

29 Q. You also talked to Mr. Flowers at the police

1 station on that same day; isn't that correct?

2 A. That's correct.

3 Q. You don't know, of course, whether or not they saw
4 each other down there, but they certainly could have; is that
5 correct?

6 A. It's possible.

7 Q. Okay. But in any event, you have indicated that
8 Doyle Simpson-- Counsel asked you if he was eliminated as a
9 suspect. Your answer to that was correct; right?

10 A. Yes, sir.

11 Q. That's in your mind, he was eliminated; is that
12 correct?

13 A. Yes, sir.

14 Q. You never did a paraffin test on him, what they
15 used to call a paraffin test. You never took any kind of
16 samples from him to send them in to the lab to see if he had
17 shot a gun that day?

18 A. No, sir. We did not.

19 Q. Or whether he had come in contact with a gun;
20 right? You didn't do a test to see--

21 A. --No, sir.

22 Q. --or whether he had any kind of particle no matter
23 how small on him. You didn't do that; correct?

24 A. (No audible response.)

25 Q. And you didn't do, you didn't search his house; is
26 that correct?

27 A. I didn't that day. We did later.

28 Q. Okay. And so you didn't go into his house. You
29 didn't take any -- would it be safe to say that when you went

1 to his house, they didn't have any money there? They didn't
2 have any money--

3 A. --What are you talking about?

4 Q. Doyle Simpson's house. They have money at Doyle
5 Simpson's house?

6 A. I don't recall any money being at Doyle Simpson's
7 house.

8 Q. Okay, so you are not saying there weren't any. You
9 are just saying you don't recall any?

10 A. That's right.

11 Q. In fact, how many people do you think-- it would be
12 safe to say, without being facetious or anything, no doubt
13 numbers of people had in the Winona area and around Winona
14 and houses far and wide have money in their house; right?

15 A. Yes, sir. I am sure.

16 Q. Okay, but in any event, you didn't, you also didn't
17 go to Emmitt Simpson's? Did you ever search Emmitt Simpson's
18 house?

19 A. No, sir.

20 Q. Okay, so you didn't search his house, and you also
21 didn't take any kind of samples from him; is that correct?

22 A. No, sir.

23 Q. Now let me ask you this. And Doyle Simpson --
24 there was some question about Doyle Simpson reported a gun
25 stolen. Doyle Simpson didn't come into the police station as
26 far as you know and report a gun stolen, did he?

27 A. No, sir. He had his supervisor call from--

28 Q. --well--

29 A. --Angelica down to the police station--

1 Q. --Now excuse me. Were you there when he asked the
2 supervisor to call?

3 A. No, but I interviewed the supervisor later on that
4 day.

5 Q. Well, I'm not asking-- see, now what the supervisor
6 says, so what you are telling us is what the supervisor at
7 some point you say told you?

8 A. Relayed to me; yes, sir.

9 Q. I see. So that is what we would call hearsay;
10 right?

11 A. Well, they told it to me.

12 Q. Well, in other words, you don't know whether that
13 is true or not, do you?

14 A. I know what they told me.

15 Q. Well, I am asking you do you know whether it's
16 true?

17 A. All I know is what they told me.

18 Q. Okay, and if the supervisor did come into knowledge
19 of Doyle Simpson's, anything about Doyle Simpson's gun or
20 what he said happened to his gun, you don't know how the
21 supervisor got that knowledge of your own personal knowledge,
22 do you?

23 A. All I know is what had she related to me.

24 Q. I see. Now in any event, because you know that
25 Doyle Simpson doesn't always tell the truth, don't you?

26 A. Yes.

27 Q. Because he lied to you?

28 A. Yes, sir.

29 Q. He lied to you about the gun?

1 A. Yes, sir.

2 Q. The same gun that we are talking about?

3 A. Yes, sir.

4 Q. He lied to you about where the gun came from?

5 A. Yes, sir.

6 Q. Okay, and we don't know whether Doyle Simpson did
7 what. But you do know that much; right? That he lied to you
8 about the gun?

9 A. About where it came from, yes, sir.

10 Q. Yes, okay. Now let me ask you this. I notice and
11 I want to kind of cover this stuff real quick here. I
12 noticed that when you - and you correct me if I am wrong -
13 when you showed the ladies and gentlemen of the jury how you
14 took the sample off the back of the hand, I think that what
15 you did is you carefully showed us how you went around what
16 we call the web of the finger. And then you said you went on
17 across the back of the hand; is that correct?

18 A. With the one that is on the right and left back.

19 Q. I understand.

20 A. Yes, sir.

21 Q. So you went across the back of the hand?

22 A. Yes, sir.

23 Q. Okay, so and, of course, you are not the expert.
24 So you can't tell us whether, if anything was found on that
25 sample, whether it was found, where it was found at? All
26 you know it was on the back of the hand; is that right?

27 A. That's correct.

28 Q. You don't know where on the back of the hand?

29 A. That's correct.

1 Q. And you don't know, for instance, if-- and certain
2 parts of the back of the hand might touch certain things in
3 certain people. In other words, certain parts of the back of
4 the hand are more likely to touch certain parts of furniture
5 than others. Isn't that true?

6 A. I wouldn't have any idea about that.

7 Q. That is a bad question. Just throw it out.

8 A. Okay.

9 Q. But in any event, what I'm saying is that you don't
10 know where it came from, and of course, you don't know
11 exactly where Mr. Curtis may have put his hand that day or
12 any other day; is that correct?

13 A. That's correct.

14 Q. Okay, so you have no way of knowing that. But you
15 do know you took the whole back of the hand, and you don't
16 know where, if anything came from his hand, where it came
17 from. Is that correct? Because you certainly--

18 A. --I know it came from the back-- from that vial.
19 That's all I do know.

20 Q. Yeah, but of course, you couldn't see anything?

21 A. That's correct.

22 Q. So you don't really know of your personal
23 knowledge; is that correct?

24 A. No, sir.

25 Q. Okay. But now another thing I was wondering; did
26 you pick Mr. Flowers up that day, or did someone else go get
27 him?

28 A. What day?

29 Q. The day of the 16th.

1 A. No, sir. I didn't pick him up.

2 Q. A couple of other officers brought him in to you?

3 A. That's what I understand.

4 Q. Okay, and one of them's name is Kenneth? Is that
5 correct?

6 A. (No immediate response.)

7 Q. Ken something or another or if you know?

8 A. I don't know.

9 Q. These are Winona police officers; right?

10 A. I believe one of them was a state trooper, and one
11 of them was a Winona police officer.

12 Q. In his statement that you read, Mr. Flowers
13 mentions a gentleman by the name of Kenneth came to pick him
14 up. Do you recall that?

15 A. I would have to look back in the statement.

16 Q. Okay, in any event, so you don't know -- now
17 generally speaking as a courtesy, for instance, you met Mr.
18 Freelon at one point prior to coming here today; isn't that
19 correct?

20 A. A couple of times.

21 Q. Okay, whenever you met him, you would shake hands;
22 right?

23 A. Yes, sir.

24 Q. And that is generally a courtesy that people afford
25 themselves; men in any event in tradition and custom; right?

26 A. (Witness nods his head.)

27 Q. Okay, and so you don't know whether or not the
28 hands were shaken between the officers that came to get him
29 and Mr. Curtis Flowers; is that correct?

1 A. I was not there.

2 Q. Okay. So now the other thing, the advice of rights
3 form. I notice you said that that was signed, or you don't
4 have it here. But there is an advice of rights form which I
5 think may already be in evidence for a different purpose
6 which it should be up here. This is 16th of July, and this
7 is on another date. But Mr., Mr. Flowers signed that; is
8 that correct?

9 (Hands document to witness.)

10 A. That's correct.

11 BY MR. LUMUMBA: And for the record, Judge, I
12 think this is marked at this point as a State's
13 Exhibit 67.

14 Q. Okay. And it looks like you signed it too; is that
15 correct?

16 A. That's correct.

17 Q. It looks like the people who signed it used the
18 same pen to sign it; is that correct? Wouldn't you say that
19 by just looking at the pen there?

20 A. I don't know. It doesn't appear that Mr. Johnson
21 used the same pen.

22 Q. Okay, but you and Mr. Curtis seemed to use the same
23 pen; is that correct?

24 A. Well, that is possible.

25 Q. It is possible. Anyway, from looking at here. So
26 in any event you know you signed it right about the same time
27 that he signed it; is that correct?

28 A. Yes, sir.

29 Q. Okay. And it is also true that you have-- now that

1 was, that was signed and then you talked to him for a while;
2 is that correct?

3 A. That's correct.

4 Q. Okay, then later on in the day is when you gave
5 him, when he agreed to let you take the swab from his hand;
6 is that correct?

7 A. Right. About 30 minutes later, I think.

8 Q. 30 minutes later. And let me see if I understand
9 it correctly. You didn't have any problems as far as you
10 know getting him to come down there, did you?

11 A. Not that I know of.

12 Q. And because you didn't-- I know you weren't with
13 me, but no one reported any problems to you?

14 A. When he came down there, he, I mean we asked him,
15 you know, if he had a problem, you know, coming down there
16 and talking with us, and he indicated that he didn't.

17 Q. He was perfectly cooperative?

18 A. He was cooperative.

19 Q. And he did whatever you asked him to do?

20 A. Yes, sir.

21 Q. Even though he didn't even have a lawyer present;
22 right?

23 A. That's correct.

24 Q. You told him he could go get a lawyer, and he said,
25 well. He just said, well, let's go; right?

26 A. Right.

27 Q. But he didn't go get a lawyer?

28 A. No, sir.

29 Q. He just was totally cooperative. He told you

1 whatever you asked him; right?

2 A. He answered our questions; yes, sir.

3 Q. Okay, he answered your questions. And for
4 instance, you asked him questions. I notice that here you
5 asked questions about the experience at the Tardy Furniture
6 Store, and he answered those questions. Is that correct?

7 A. Yes, sir.

8 Q. And that is probably the reason you wanted to talk
9 to him because you wondered about the experience at Tardy
10 Furniture Store. Is that correct?

11 A. Well, not on that form. That form was taken two
12 days later.

13 Q. Oh, I see. Okay, but you did ask at some point
14 about the experience at Tardy Furniture Store; is that
15 correct?

16 A. Yes, sir.

17 Q. Okay, and he explained to you what happened; right?

18 A. Yes, sir.

19 Q. He essentially said the same thing about what
20 happened on the 16th that he said on the 18th; is that
21 correct?

22 A. About what?

23 Q. About the batteries dropping; right?

24 A. Yes, sir.

25 Q. And about Ms. Tardy saying that he would have to
26 pay for them if she couldn't get it taken care of some other
27 way; right?

28 A. That's correct.

29 Q. Said he had no problem with it; right?

1 A. Yes, sir.

2 Q. Said he was not upset; right?

3 A. Said he wasn't.

4 Q. Said he understood; right?

5 A. Yes, sir.

6 Q. And in any event, what we are talking about anyway
7 in terms of his check being eaten up is some \$82.00; is that
8 correct?

9 A. Yes, sir.

10 Q. And I notice that the check was still there. In
11 other words, Ms. Tardy had actually written out-- well,
12 somebody had written out a check on 7-5-96; is that correct?

13 A. That's correct.

14 Q. Okay--

15 A. --It appears to.

16 Q. Huh?

17 A. It appears that someone did.

18 Q. And 7-5-96 if I understand, actually that is after
19 7-3-96. That would be true, wouldn't it?

20 A. Yes, sir.

21 Q. And 7-3-96 is when the batteries were dropped;
22 right?

23 A. Yes, sir.

24 Q. So somebody wrote out a check two days later
25 anyway; right?

26 A. That's correct.

27 Q. And Mr. Flowers told you there was no problem
28 between him and Ms. Tardy; right?

29 A. Yes, sir.

1 Q. He said that if she had to take the money, it was
2 okay. That's what he said; right?

3 A. That's what he said in his statement; yes, sir.

4 Q. Well, I mean and when you say that's what he said
5 in his statement, I mean all you have -- other people have
6 told you things about, for instance, where they were that day
7 and who they saw that day. You weren't there, were you?

8 A. No, sir.

9 Q. So all you are doing is just writing down what they
10 say; right?

11 A. That's right.

12 Q. And unlike when Mr. Flowers gave you the statement,
13 when you talked to a lot of the people that you talked to,
14 there had already been a reward offered in this case. Isn't
15 that true?

16 A. I don't-- when the time we talked to him, I don't
17 think there had been a reward offered.

18 Q. Yeah, well, let's take an example. Clemmie Fleming
19 at the time you talked to her, you didn't talk to her until
20 sometime in 1997. Isn't that true?

21 A. I believe that's right.

22 Q. And a reward had been offered; right?

23 A. Yes, sir.

24 Q. Published in the paper; right?

25 A. Yes, sir.

26 Q. And the same thing is true of Jeanette Fleming.
27 You didn't talk to her, or you talked to Jeanette Fleming,
28 Mary Jeanette Fleming in let's say February of 1997; right?

29 A. I don't remember the exact date, but I have talked

1 to her some time after that. I know it was in '97.

2 Q. Right. And actually at that time there had been a
3 wide published article that the Defendant had been arrested.
4 Mr. Flowers had been arrested; isn't that true?

5 A. That's correct.

6 Q. And so, and in that same paper they had an article
7 there talking about reward still good for more information;
8 right?

9 A. Yes, sir.

10 Q. And that's when you-- it was only after that that
11 you talked to Mary Jeanette Fleming; right?

12 A. I talked to her sometime in '97. I don't
13 remember--

14 Q. --well, in any--

15 A. --I remember it was after, it was after he had been
16 arrested.

17 Q. But in any event now it would be safe to say that
18 she didn't come to you on the 16th and tell you anything
19 about seeing Curtis Flowers; right, walking toward Tardy's?

20 A. No, sir. She did not.

21 Q. And actually she never said that he was-- well,
22 strike that. She didn't come to you on any time in July and
23 say that?

24 A. No, sir.

25 Q. She didn't tell you that at any other time in 1996?

26 A. No, sir.

27 Q. She didn't tell you that in the first month before
28 he was arrested of 1997?

29 A. I don't remember exactly when she told us in '97.

1 I don't remember the exact date.

2 Q. Well, we will get back to that in a little while.
3 Okay, but in any event the same would be true with what I
4 just said as far as Clemmie Fleming is concerned. Isn't that
5 true?

6 A. I don't remember the exact date that she came
7 forward.

8 Q. I see. But let me see. So at the time that you
9 talked to Mr. Flowers, apparently he was a suspect because of
10 the, what you understood to be him being terminated at the
11 job and which you understood to be the battery incident; is
12 that correct?

13 A. Well, we had information that, you know, that he
14 had worked down there, had had that problem and had recently
15 been let go, and we wanted to talk to him about it.

16 Q. I understand. And actually on your form here where
17 you took the gunpowder residue, you actually refer to him as
18 a suspect, don't you?

19 A. Yeah. It asks for a brief description of the
20 suspect's activities from the time of the shooting until the
21 time that the things were taken, and I said the suspect, what
22 he told me, was at his residence prior to questioning and his
23 other activities were unknown.

24 Q. Do you do the same routine every morning when you
25 get up, or do sometimes you do different things?

26 A. Sometimes I do different things.

27 Q. And if I was to come to you at 2 o'clock the day of
28 any given morning, you may not, you remember, you would try
29 to remember the best you could the things you had done that

1 morning if I asked you. Isn't that correct?

2 A. Yes, sir.

3 Q. But you are not keeping time unless you are on the
4 job or something like that and there is a reason for you to
5 keep time. If it's a day off, for instance, you are not
6 keeping time of everything what you do; right?

7 A. Well, what time frame are you referring to?

8 Q. Well, I mean for instance if you are at home and
9 you are relaxing, you go out to the store. You go over to
10 somebody's house. You don't look at the clock every time you
11 leave, do you? You do?

12 A. Well, I keep pretty close attention to it.

13 Q. Okay, you do that; right?

14 A. Yeah.

15 Q. You understand there is people who don't do that;
16 right?

17 A. Could be.

18 Q. Okay. Well, and so if a person doesn't have any
19 particular reason to keep the time like, for instance, that
20 it's required for their job to write it down, they could very
21 well be unaware of what time it is; right?

22 A. Possibly.

23 Q. Mr. Flowers on the 16th, at that point in time he
24 was not working; right?

25 A. That's correct.

26 Q. He was baby sitting; right?

27 A. That's what he told us.

28 Q. He wasn't punching a clock as far as you know, was
29 he?

1 A. Not that I know of.

2 Q. Okay, and so between the statement he gave to you,
3 and by the way the first statement that you took on the
4 7-16-96, you really didn't take a taped statement, did you?

5 A. No, sir.

6 Q. So you really don't have anything down here as
7 exactly what was said, do you?

8 A. Just those notes.

9 Q. These are just notes?

10 A. Yes.

11 Q. Your recollection of what was said; right?

12 A. Right. Correct.

13 Q. You know, sometimes people who reside with other
14 people, husband and wife, fiance, boyfriend and girlfriend,
15 whatever -- one gets up and goes to work; right? That
16 happens; right?

17 A. I am sure.

18 Q. The other one wakes up, might get up out of the
19 bed, might not; right?

20 A. (Witness shrugs.)

21 Q. That happens; right?

22 A. I am sure it does.

23 Q. Okay, and then they might go right back to bed;
24 right?

25 A. Possible.

26 Q. Okay, you don't think they necessarily punch a
27 clock on it, do you?

28 A. I don't, wouldn't have any idea.

29 Q. Okay, but in any event, you didn't write down the

1 exact conversation here, so you don't have the exact language
2 of what Mr. Flowers said to you on the 16th, do you?

3 A. I know what he said on the 16th.

4 Q. Well, that is not my question. You don't have for
5 us the exact language of what he said?

6 A. No, I don't have a taped statement or a word for
7 word statement as to what he said.

8 Q. But Mr. Flowers told you on both the 16th and the
9 18th that he went to two places on that day. Is that
10 correct?

11 A. Yes, sir.

12 Q. Okay. He didn't say that he had never walked down
13 Academy before; right?

14 A. I don't remember if we asked, whether we asked him
15 that question or not.

16 Q. But he never told you that he never was on the east
17 side of - what do you call it? - 51. He didn't ever tell
18 you, "Well, I have never been on the east side of 51 in my
19 life." He didn't tell you that; right?

20 A. Oh, no.

21 Q. Okay. In fact, didn't he tell you that he often
22 walks towards Tardy's because he walks from his house
23 frequently when he was working there and actually walked
24 across there and went down a number of streets and wound up
25 at Tardy's. Did he tell you that?

26 A. Yes, sir. I believe he did.

27 Q. Okay, and so he has never told you that he has
28 never walked past the gentleman's house, BoJack's house.
29 What is his name? Edward Kennedy. He never said, "I have

1 never walked past there"; right?

2 A. I don't think we asked him that question.

3 Q. Okay, but he never told you that in any event, did
4 he?

5 A. Not that I-- he told me that he wasn't, that
6 morning that he wasn't on that side of 51 Highway.

7 Q. And that's the only thing he told you; right?

8 A. And that question was asked more than once.

9 Q. Okay. And he said several times that he wasn't on
10 the east side; is that correct?

11 A. That's correct.

12 Q. On that particular day?

13 A. On that day.

14 Q. Okay. And of course, okay. Where were you when
15 you got the call on this case?

16 A. I was at my desk in Greenwood.

17 Q. And how long had you been at work?

18 A. Since approximately 8:00 that morning.

19 Q. You remember that because that is when you are
20 always there, or you remember that because you remember you
21 were there that particular day?

22 A. Well, I remember where I was that day.

23 Q. Okay, every hour of that day?

24 A. Yeah. That date kind of stands out in my mind as
25 to where I was. You know, I mean I might not be able to tell
26 you the exact minute, but I know about where I was that day.

27 Q. Every hour that day? Even before you came to work?

28 A. I know where I was before I got the call, where I
29 was; yes, sir.

1 Q. Okay, well, let me ask you this. And you are a
2 police officer; right?

3 A. Yes, sir.

4 Q. Okay. Let me ask you this. I would like to have
5 the exhibit -- well, before we do that, let me, can I get
6 this board over here, please.

7 (Mr. Lumumba brings over easel containing pad
8 with large white paper.)

9 Q. I will put this out here. I hope everybody can see
10 it. Off to the side so we can also see the-- can everybody
11 see? (Jurors nod their heads.) Can you see this?

12 A. Yes, sir.

13 Q. Okay. Now at some point in time you interviewed a
14 gentleman by the name of James "BoJack" Kennedy; is that
15 correct?

16 A. I didn't interview him; no, sir.

17 Q. But you indicated that Mr. BoJack pointed out to
18 you where he saw Mr. Curtis Flowers at some point; right?

19 A. Yes, sir.

20 Q. By the way, do you understand that the Anguilla
21 factory actually runs, the parking side of it runs all the
22 way down to Church Street? Do you understand? Church-- it's
23 not Anguilla Drive. There is a place called Anguilla Drive.
24 Am I correct?

25 A. I believe it is called Angelica.

26 Q. Angelica, I'm sorry. Angelica Drive, you
27 understand that; correct?

28 A. Yeah, and it runs off of 51. It is just a short
29 street there.

1 Q. Yeah, but it also runs all the way down to where
2 the factory faces, where the parking lot is. It goes all the
3 way down to Church Street; right?

4 A. I would have to look at a map to know for sure.

5 Q. Okay. But anyway, Church Street is about a block
6 south or, of 51; right?

7 A. I don't have a map.

8 Q. We will look at the map in a minute. But anyway,
9 Mr. BoJack, when he was talking to you and he talked to the
10 other gentleman who was interviewing him, he indicated that
11 the person he saw that day had on long white pants. (Mr.
12 Lumumba writes on large pad on easel.) And secondly, that
13 they had a black sweater on; is that right?

14 BY MR. EVANS: Your Honor, I object. This
15 witness has said that he did not interview him on
16 these facts.

17 BY THE COURT: I believe he did. That's what
18 he testified to.

19 BY MR. LUMUMBA:

20 Q. Well, let me ask you this. Were you present when
21 he was pointing out the spots where he was supposed to have
22 saw somebody at?

23 A. No, sir.

24 Q. You weren't present?

25 A. No, sir. I was not.

26 Q. You are telling us what somebody-- you put on that
27 map what somebody else said?

28 A. Information that I received, was at the location
29 that he was showing me of where he was seen.

1 Q. Okay. Well, then you also, I am sure, you also
2 received information and information was made available to
3 you, I am sure, as to what his description of the person was
4 on that day. Isn't that correct?

5 A. I don't remember what the description was.

6 Q. Okay, well, you have had an opportunity to see the
7 taped statement from Mr. BoJack, haven't you?

8 A. No, sir.

9 Q. Have you had an opportunity to see the notes from
10 Mr. BoJack?

11 A. No, sir.

12 Q. You haven't seen either one of those?

13 A. No, sir.

14 Q. You are not aware of the fact that he said that the
15 person he saw had a black sweater on and white pants, long
16 white pants?

17 A. I have not seen that statement.

18 Q. Oh, okay. Well, all right. You don't dispute that
19 though, do you?

20 BY MR. EVANS: Your Honor, again I hate to
21 have to object, but this has nothing to do with
22 this particular witness.

23 BY THE COURT: It really doesn't. Let's move
24 on.

25 BY MR. LUMUMBA:

26 Q. Now the witness by the name of Katherine Snow, I
27 will just put "K. Snow." You were present when she was being
28 interviewed; right?

29 A. Yes, sir.

1 Q. Okay. And she really never gave you a clothing
2 description except to say that the person didn't have a cap
3 on; is that right?

4 A. I don't remember that she said that.

5 Q. I'm going to see if this document refreshes your
6 recollection as to an interview that you had with her on
7 7-25-96.

8 A. These are not my, this is not my handwriting. I
9 don't know that I was--

10 Q. What is your name?

11 A. Jack Matthews.

12 Q. Okay. And so were you present?

13 A. No, sir. Those are not my initials.

14 Q. Okay. So you don't know what she said about the
15 man having just no cap on. You are not familiar with that?

16 A. No, sir.

17 Q. Okay. But you are not familiar with what time she
18 said she saw the man?

19 A. Yes, sir. It was approximately 30 minutes after
20 she went to work that morning.

21 Q. You remember her saying between 7:00 and 7:30?

22 A. Somewhere along in that time; yes, sir.

23 Q. (Mr. Lumumba writes on easel pad.) And if she said
24 the man didn't have a cap, you wouldn't dispute that, would
25 you?

26 A. I don't remember anything about it.

27 Q. Were you present at any time when she took, when
28 she gave a taped statement?

29 A. No, sir.

1 Q. Okay. (Turns page on easel.) Then the other
2 person that you have talked about here is, I think that you
3 demonstrated on the map something about a person by the name
4 of Clemmie... (Counsel writes on board) Fleming. Were you
5 present when Clemmie Fleming was interviewed?

6 A. No, I was not.

7 Q. You were not? And were you present when Jeanette
8 Fleming was interviewed?

9 A. Yes. Jeanette Fleming.

10 Q. You were present?

11 A. I was present.

12 Q. Okay. I will put J. Fleming. (Counsel writes on
13 board.) And at the time she was interviewed she said the man
14 she saw had on black jeans, dressy looking black jeans;
15 right?

16 A. I would have to look at the statement. I don't
17 remember exactly what she.

18 Q. She said the man had black pants on, sort of dressy
19 like; is that right? (Counsel writes on board.)

20 A. Sir? I didn't understand your question.

21 Q. The man had black pants on?

22 A. That's what she said.

23 Q. Okay, she didn't say anywhere in there that he had
24 long white pants on; right?

25 A. No, sir.

26 Q. Okay. She indicated that the man had a white shirt
27 on?

28 A. That's correct.

29 Q. Said he was dressy?

1 A. Sort of dressy like.

2 Q. And what time did she say she saw the man? She
3 said this occurred some time around about 9 o'clock; is that
4 right?

5 A. (Long pause.) I'm looking for a time, but I don't--

6 Q. Well, let me help you here if I can. Let me see.
7 She indicated that-- okay. She indicated it was when she was
8 downtown; is that correct? And did she say something about
9 she had dropped off her car? Do you remember her saying that
10 at Weed Brothers?

11 A. Yes, sir.

12 Q. Okay. So whatever time she was supposed to have
13 dropped her car off at Weed Brothers, that's when this was
14 supposed to have happened. Is that correct?

15 A. That's correct.

16 Q. By the way, her statement didn't come, you don't
17 remember interviewing her anytime before February the 13th of
18 1997; is that correct?

19 A. No, sir.

20 Q. Okay. So her interview was on... (Counsel writes
21 on board.) Her interview was actually on February 13th,
22 '97. This incident actually happened in July of '96; is
23 that correct?

24 A. That's correct. July the 16th.

25 Q. July 16th, okay. So she was talking to you about
26 something which she thinks happened-- it would have been like
27 at least six or seven or eight months ago; is that correct?

28 A. Yeah, looks like about six or seven.

29 Q. But she did say black pants, white shirt, sort of

1 dressy. You do remember that?

2 A. It's in the statement; yes, sir.

3 Q. And you don't remember her saying he had any long
4 white pants on?

5 A. No, sir.

6 Q. Okay. Did you ever talk to a person by the name of
7 Hollman, Patricia Ann Hollman?

8 A. I don't remember talking to her.

9 Q. You don't remember Patricia. Did you ever get a
10 report where Patricia Ann Hollman claims that the person that
11 she saw had on a T-shirt? She is claiming that the person,
12 that on that day Mr. Flowers had a white T-shirt on and black
13 silk or--

14 A. --I don't remember ever talking to Patricia Ann
15 Hollman.

16 Q. Okay, you never talked to her at all?

17 A. I'm not going to say that I didn't. I don't
18 remember it.

19 Q. Have you ever seen reports--

20 A. Not that I'm aware of.

21 Q. --of where, what her testimony was?

22 A. No, sir, not that I'm aware of.

23 Q. Or what her statement was?

24 A. No, sir.

25 Q. Okay. Well, you would -- could we have a copy of
26 exhibit, the exhibit, transparent exhibit?

27 (Reporter handed Exhibit S-70 to Mr. Lumumba.)

28 BY MR. LUMUMBA: I'm going to try to put this
29 into perspective here, Judge. I'm not used to this

1 machine, so we will do the best we can.

2 (Turns on overhead projector and places
3 Exhibit S-70 on it.)

4 All right, here we go. (Pause) Well,
5 Judge--

6 **BY THE COURT:** --I think you have got it
7 upside down.

8 **BY MR. LUMUMBA:** Yeah, I'm not having a lot
9 of success here. Okay. Here we go. Here we go.
10 Looks like our spot is still there. No, they are.

11 **BY MR. LUMUMBA:**

12 Q. Okay, you see the red marks that you put on the
13 chart here; is that correct?

14 A. Yes.

15 Q. And you see the mark up there that you put at the
16 Defendant's house. That is up at the top. There is a blue
17 mark at what we call-- we have a pointer here, I believe. Up
18 here at McNutt Street; is that correct?

19 A. Yes, sir.

20 Q. Now you would agree with me, don't you, if a person
21 came into this house around about between 7:00 and 7:30 A M
22 and had a person wearing a black windbreaker kind of pants
23 and a white T-shirt, came into this house about that time and
24 stayed in there 20 minutes or so, came in somewhere between
25 7:00, 7:30 and stayed in there 20 minutes; then that person
26 could not have been at Anguilla-- Angelica -- I am sorry;
27 thank you -- could not have been at Angelica which is
28 somewhere down here over to the left. I'm sorry. Angelica.

29 **BY THE DEFENDANT:** To your left.

1 Q. Right here. Actually it is called something else
2 on your map here; right? But in any event, this is Angelica
3 Road right here; is that correct, or Angelica Drive?

4 A. Yes, coming off 51.

5 Q. Okay, but you notice how Angelica Drive comes into
6 Church Street here? Did you notice that? This is Church
7 Street; right?

8 A. I can't, I can't see from here.

9 Q. Okay, you can approach. You can approach. Feel
10 free.

11 A. (Witness steps down closer to projector.)

12 Q. Just stand off. Just take a look and when you
13 talk, stand off to the side. You know that this is Church
14 Street; right, at the bottom here?

15 A. That's what it appears to be; yes, sir.

16 Q. Okay, and you know that this Angelica Drive goes
17 all the way down here to Church Street?

18 A. Yes.

19 Q. And you know that the factory that you are talking
20 about is right at the end of this street. You know that?

21 A. I don't know exactly, you know, where it's located
22 on there. I know it's on that drive right in there.

23 Q. So you don't know exactly where it's located. You
24 don't know it's located way up here, do you?

25 A. No, I know it's located on that road right there.

26 Q. So--

27 A. --I'm not aware of any, exactly where, you know.

28 Q. Okay.

29 A. The exact location on that film.

1 Q. Okay.

2 A. Or that map.

3 Q. I understand that. But what I'm saying to you, you
4 don't know then. If you don't know that, you don't know that
5 it's located way up here where you put that red mark. It
6 could very well be located down here at Church Street?

7 A. It's a possibility.

8 Q. In any event, if it is located down here at Church
9 Street, then it would be actually east of Academy Street; is
10 that correct, southeast?

11 A. (Witness shrugs.)

12 Q. That is where it would be if it's located--

13 A. --if it's down there, yes.

14 Q. And you just don't know?

15 A. I know it's on that drive right there, and it's
16 just a little short street right off of Highway 51. You can
17 see the factory from 51.

18 Q. I understand, but then the factory has a parking
19 lot?

20 A. A large parking lot.

21 Q. And it's on Church Street or right off of Church
22 Street. You know that?

23 A. It comes right off of-- the road that leads into it
24 runs right into -- this road here runs right into the parking
25 lot.

26 Q. Okay. It runs right into the parking lot right at
27 Church Street. You know that?

28 A. Well, I don't know whether it's at Church Street or
29 not.

1 Q. Okay, but anyway, you would agree with me that it
2 would be difficult for a person to be in this lot at between
3 7:00 and 7:30 and also be up here between 7:00 and 7:30
4 spending twenty minutes in the home. Between that time?

5 A. I don't understand your question.

6 Q. Okay. If you have got a person that is up here
7 between 7:00 and 7:30 and they spend twenty minutes in this
8 house, then it would be difficult for them to be there and at
9 the same time be down here on the drive at the Angelica
10 plant; right? At the same time?

11 A. Well, if they went in the house at 7 o'clock and
12 came out at 7:20, is that what you are saying?

13 Q. Yeah.

14 A. And then they went down there?

15 Q. Yeah.

16 A. They could be there in relatively, somewhere in the
17 neighborhood of 7:30 or maybe just a little bit later.

18 Q. It would take at least 14 or 15 minutes for them to
19 walk down there, wouldn't it?

20 A. I would think at least.

21 Q. Okay. And in any event, if they had black pants
22 when they left this house, they would have black pants when
23 they passed this spot that you have listed for -- you listed
24 a spot here which is supposed to be where Mr. BoJack was;
25 right? Mr. Kennedy?

26 A. Kennedy.

27 Q. Yeah, but actually where Mr. Kennedy lives is right
28 at the corner of Angelica Drive and 51; isn't that true?

29 A. Well, that street is just, like I say, it's just a

1 little old short street there. It is just a few houses there
2 on that street.

3 Q. Does he live right at the corner?

4 A. I don't know exactly where he lives.

5 Q. So you don't know that he lives all the way down
6 here which appears to be some ways off of 51?

7 A. I know he lives on that street.

8 Q. Okay. You don't know that he lives right up here
9 on the corner?

10 A. I don't know exactly where he lives.

11 Q. Okay, but in any event, wherever he lives, it would
12 be safe to say that the person left there wearing black
13 pants. Unless they changed somewhere out here in the street,
14 they would still have black pants by the time they got down
15 here shortly after 7:30. Isn't that correct?

16 A. Unless they stopped and changed.

17 Q. Okay. Well, if they stopped and changed and then
18 kept going, then it would be still considerably-- that means
19 that they would even be later by the time they got to
20 Angelica Drive; right? Is that true?

21 A. Well, yes. A few seconds, yeah.

22 Q. Okay, and in any event, you would agree also, would
23 you not, that -- now I think you left us a mark here. Now I
24 think that this was an accidental marking which was supposed
25 to be a dot, but if I remember correctly, this mark was
26 supposed to represent a mark on Campbell Street. Is that
27 correct?

28 A. I believe it should have been on Carrollton there.

29 Q. On Carrollton Street, okay?

1 A. The mark should have been on Carrollton.

2 Q. And this was supposed to represent the location of
3 Jeanette Fleming; is that correct?

4 A. Yeah, but it is on that other street, Carrollton.

5 Q. Okay, it should have been over here on Carrollton?

6 A. Carrollton.

7 Q. So it's in the wrong spot?

8 A. Right. I just got messed up. I was looking down.

9 Q. Okay, it should have been over here?

10 A. It should have been right there.

11 Q. Should have been over here?

12 A. Or down a little bit.

13 Q. Down a little bit, okay. But in any event, it
14 would be safe to say that wherever the mark is supposed to
15 be, that the woman who said that she saw somebody over here
16 on Carrollton Street said that they had black pants on. Is
17 that correct?

18 A. I didn't talk with her. I don't know what--

19 Q. Oh.

20 A. --what description she gave.

21 Q. Okay, well, let's assume that she said dressy black
22 pants and a dressy white shirt, button up, okay? Can you get
23 that for a moment? Assume that's in the report.

24 A. Who are we talking about?

25 Q. Jeanette Fleming.

26 A. Now that is not the location that Jeanette Fleming.

27 Q. Okay, well, where did Jeanette Fleming supposed to
28 be?

29 A. It's up there on-- excuse me. I made a mistake. I

1 made a mistake. This is where Jeanette Fleming. (Witness
2 points to red mark.) You are right. This is Jeanette. I
3 thought you said Cassie first-- I mean Clemmie.

4 A. Okay, well, Jeanette Fleming was supposed to have
5 of-- well, let's assume that Jeanette Fleming testified and
6 she gave a report saying the person was dressy, had black--
7 and in fact, you just looked at Jeanette Fleming's report,
8 and she said that the person was supposed to be dressy, had a
9 white shirt and black pants.

10 BY MR. EVANS: Excuse me, Mr. Lumumba. Your
11 Honor, my only objection is at this point I'm going
12 to object to going into these reports unless I'm
13 going to be allowed to go into the reports. I just
14 want to point that out. I intend to go into them,
15 and if I'm not going to be allowed to, I do object
16 at this point to him being allowed to go into them.

17 BY THE COURT: Well, they are hearsay.

18 BY MR. LUMUMBA: Okay, well, Judge, let me ask
19 as far as Jeanette Fleming is concerned--

20 BY THE COURT: --And they are also cumulative
21 in the sense that she has already testified.

22 BY MR. LUMUMBA: Okay, well, let me pass from
23 that.

24 BY MR. LUMUMBA:

25 Q. I think that you told us that you were present when
26 Jeanette Fleming told you guys that the person had black
27 pants, a white shirt, and was sort of dressy. Were you
28 present when she said that?

29 A. Yes, sir.

1 Q. Okay, so you were there when she said that sometime
2 in February of 1997?

3 A. That's correct.

4 Q. Okay. And she is the one that suggested the person
5 was over here on this street which is Campbell Street. Is
6 that correct?

7 A. That's correct, and that is the right location. I
8 thought we were talking about the other lady.

9 Q. Okay. So we are talking about a person that
10 started out up here wearing black, wearing a white T-shirt
11 and black silky looking warm up pants, gets down, and then we
12 have another person down here who passes with long white
13 pants and a black sweater. Then we have another person who
14 gets over here and has a dressy black jeans and a white
15 button up shirt. Do you know that that is what your
16 investigation disclosed?

17 A. That is, the only person I talked to in that
18 scenario that you just gave is Jeanette Fleming, and I know
19 what she says. As far as what the other two individuals
20 stated, I don't know, and I don't have any knowledge of
21 that.

22 Q. Okay. I see. Now let me ask you this. Did you
23 talk to Mr. Simpson, Doyle Simpson?

24 A. Yes, sir.

25 Q. Did he report to you that the person reported to
26 him to be in the parking lot was supposed to have had white
27 shorts on and some kind of T-shirt? Did he report that to
28 you?

29 A. I don't remember exactly what he reported.

1 Q. Did he report to you that the person was supposed
2 to have a white cap on?

3 A. I don't remember whether he did or didn't.

4 Q. Oh, excuse me; not, no, wasn't supposed to have
5 white shorts on. This person was supposed to have blue
6 shorts on. He never reported that? He never said that?

7 A. He may have. I don't remember it.

8 Q. Okay, you can adjourn.

9 BY THE COURT: Okay. It is 12 o'clock, and
10 they are expecting the jury for lunch, so we are
11 going to break at this point for lunch. We will
12 resume at 1 o'clock.

13 (FOLLOWING THE NOON RECESS ON MARCH 27, 1999,
14 TRIAL RESUMED IN OPEN COURT WITH THE COURT, ALL
15 COUNSEL, AND THE DEFENDANT PRESENT:)

16 BY THE COURT: I need the jury and Mr.
17 Matthews.

18 JURY ENTERS COURTROOM.

19 BY MR. LUMUMBA: May I proceed, Judge?

20 BY THE COURT: As soon as we get you a
21 witness.

22 (MR. JACK MATTHEWS ENTERED THE COURTROOM AND
23 RESUMED THE WITNESS STAND.)

24 BY THE COURT: All right, sir.

25 CONTINUED CROSS-EXAMINATION BY MR. LUMUMBA:

26 Q. Mr. Matthews, as I understand it, so you were
27 present when Jeanette Fleming was being interviewed; is that
28 true?

29 A. Yes, sir.

1 Q. Okay, and you did look at that interview, I
2 believe, and it did indicate that she described a person as
3 having black pants and a white shirt; is that correct?

4 A. That's correct.

5 Q. Okay, and sort of dressy; is that true?

6 A. That's what she said. Yes, sir.

7 Q. Okay, now the only other thing is you were present
8 when Katherine Snow was initially talked to on the 16th of --
9 and Jeanette Fleming, by the way, let me just-- give me
10 that. Jeanette Fleming, as you remember, the interview was
11 some time in 1997. Is that true?

12 A. Yes, sir. I believe February.

13 Q. February, 1997?

14 A. Yes, sir.

15 Q. Okay. Now Katherine Snow, I think you have
16 indicated was talked to on, or maybe you haven't indicated,
17 but she was talked to on the 16th. Is that true, the 16th of
18 July?

19 A. That could be true. I'm not positive about that.

20 Q. Okay. You didn't, you didn't participate in the
21 interview of BoJack or Mr. Kennedy?

22 A. No, I did not.

23 Q. And you didn't participate in the interview of
24 Clemmie Fleming as far as you know?

25 A. No, sir. I did not.

26 Q. But in any event, as far as Katherine Snow is
27 concerned, you were present on the 16th when she was
28 interviewed; is that correct?

29 A. Yes, sir. I was there.

1 BY MR. EVANS: Which exhibit number is that?

2 BY MR. LUMUMBA: That is just a report.

3 BY MR. EVANS: Your Honor, so we would have a
4 clear record, I would just ask that any document he
5 be handed be marked for identification so there
6 would be a record of what it is.

7 BY THE COURT: Okay. Let's do that.

8 BY MR. LUMUMBA:

9 Q. Do you recognize that?

10 A. Yes, sir.

11 Q. Okay.

12 (NOTES FROM KATHERINE SNOW INTERVIEW OF
13 7/16/96 WERE MARKED AS DEFENDANT'S EXHIBIT D-16 FOR
14 IDENTIFICATION.)

15 BY MR. LUMUMBA:

16 Q. D-16 for identification purposes. If you need it
17 to refresh your recollection, use it. If you don't, you
18 don't have to.

19 A. Okay.

20 Q. But in any event, would it be safe to say that on
21 the 16th of July, Katherine Snow never told you that she saw
22 a person by the name of Curtis Flowers in the Angelica lot?
23 She didn't say that, did she?

24 A. She didn't know the person that she saw in the lot.

25 Q. Okay. And so she gave you-- all she could do is
26 give some kind of description; is that correct?

27 A. That's correct.

28 Q. And that description didn't include any clothing
29 description. Is that also correct?

1 A. The description she gave was dark skin, 25 to 30,
2 short hair, approximately 5'10", stocky build. Could
3 possibly identify the subject.

4 Q. Did she give any clothing description?

5 A. That was all the description that she gave.

6 Q. Okay. Now on, do you remember, recall seeing her
7 again on the 19th of August of '96?

8 A. No. I'm not-- I may have but I don't recall.

9 Q. Do you recall ever showing her any photo spread on
10 the 19th of August of '96?

11 A. I know that she was shown one at some time. I
12 don't know if that was the date she was shown.

13 Q. Were you present?

14 A. I want to-- yes, I want to think that I was.

15 BY MR. LUMUMBA: I would ask this document be
16 made, marked for identification purposes.

17 (STATEMENT OF KATHERINE SNOW WAS MARKED AS
18 DEFENDANT'S EXHIBIT D-17 FOR IDENTIFICATION.)

19 BY MR. EVANS: May I see what document you
20 have got, Mr Lumumba?

21 (Mr. Evans looks at Exhibit D-17 for
22 identification.)

23 BY MR. EVANS: Thank you.

24 (Exhibit handed to the witness.)

25 BY MR. LUMUMBA:

26 Q. Would you have been present at the time that she,
27 and if you can use that to refresh your recollection, at the
28 time that she was shown a picture lineup?

29 A. Yes, sir. I was there.

1 Q. Okay. And you, of course-- did she tell you at
2 that time that she had had a conversation with Mr. Doyle
3 Simpson at any time after the 16th of July?

4 A. Yes. She worked at the Angelica plant, and she
5 knew Doyle.

6 Q. Okay. Now my question is you don't know what, if
7 any, conversations her and Doyle had had between 7-16 and
8 8-19 of '96, do you?

9 A. I'm not aware of any.

10 Q. Okay. But in any event, at that particular point
11 in time when you showed her the picture display, she didn't
12 say that she knew Curtis Flowers or that that person was
13 Curtis Flowers at that time. Did she tell you that?

14 A. I don't believe she knew his name at that time.
15 She recognized the picture, but I don't know that she knew
16 his name.

17 Q. Yeah, well, that's my question. Did she indicate
18 to you at any time prior to 8-19-96 -- first of all, I want
19 to know did she indicate to you at any time prior to that
20 that the person she saw was Curtis Flowers? Did she ever say
21 that?

22 A. She indicated to us on the 16th--

23 Q. --Excuse me; excuse me. Can you tell me, can you
24 answer my question, and then once you do that, then I don't
25 have, I don't have any problem with you explaining. My
26 question is at any time prior to 8-19-96 did she ever say
27 that the person that she saw was Curtis Flowers?

28 A. She didn't say that, but she also said that in our
29 initial interview that she didn't know who the person was,

1 but that she thought she could identify him.

2 Q. Okay, true. All right. Okay, but in any event,
3 she didn't say it was Curtis Flowers; right?

4 A. She didn't know who that person was.

5 Q. She didn't say she had ever seen him before; isn't
6 that true?

7 A. No, she did not say that now.

8 Q. She did not say that she had ever seen--

9 A. --never seen him before.

10 Q. Okay. Now the other thing is and then at any, on
11 the 19th of August, had she come to you and say, "Well, that
12 was Curtis Flowers" at that time?

13 A. No.

14 Q. Okay. But she did work at the same plant where
15 Doyle worked; is that correct?

16 A. That's correct.

17 Q. By the way, did she indicate to you when asked
18 initially that the, at that time that the height of the
19 person that she saw was 5 foot 6?

20 A. Well, here on the initial interview--

21 Q. --Can you answer my question, please, because we
22 are going to get to all of it.

23 A. It says--

24 Q. --The question I'm asking you, did she admit, did
25 she say on the taped interview that the person that she saw
26 was a dark skinned guy, talked about no hair or shaved real
27 low, and he was 5 foot 6 or somewhere in there?

28 A. Okay, are you talking about the interview on the
29 16th--

1 Q. --No.

2 A. --or the 19th of August?

3 Q. The one on the 19th. The one that you are holding
4 in your hand there.

5 A. Well, I am holding both of them.

6 Q. Okay, well, the one that I just handed you, the one
7 on the 19th. This is the one that I just handed you right
8 there.

9 A. Okay. All right. Now what was your question?

10 Q. Let's go down, do you see where it first says
11 "Johnson" up there, where the questions and answers began?

12 A. Yes, sir.

13 Q. Okay, let's go 1, 2, 3, 4, 5, 6, 7, 8 paragraphs
14 down. Do you see that?

15 A. Is this Johnson or Snow?

16 Q. Snow. Starts with Snow. Do you see where it
17 starts with Snow?

18 A. Yes, sir.

19 Q. Okay, said he was dark skinned guy, no hair or
20 shaved real low, about 5 foot 6 or somewhere in there. Is
21 that what she told you?

22 A. That's what she said on the 19th; yes, sir.

23 Q. And then Johnson says, "I think you have already
24 given us a height of 5 foot 10." And then at that point she
25 says, "yes, sir." Is that correct?

26 A. Yes, sir.

27 Q. Okay, so anyway at least in that interview she was
28 saying that the person was about 5 foot 6; is that correct?

29 A. Yes, sir.

1 Q. Okay. Now the only, just a few other questions. I
2 understand that, just to make sure I had this straight. You
3 talked to-- at some point you said you went by and you
4 checked on the people in the house as far as the children who
5 lived in the house. Were you aware of the fact that Ms.
6 Moore, Connie Moore had a child by the name of Marcus, not
7 Lemarcus but Marcus also?

8 A. Yes, I knew that she had another child.

9 Q. Okay, and that child, did you ever see that child?

10 A. No, sir. She indicated to us that he didn't live
11 there in the house.

12 Q. Okay. And she indicated to you that he had lived
13 there and he still visited; is that correct?

14 A. (No immediate response.)

15 Q. If you know?

16 A. I don't know.

17 Q. Okay. Now let me ask you this. Would it be safe
18 to say that that child was an older child?

19 A. I understand that he was older than the other two
20 children.

21 Q. But in any event, the young man that you saw was a
22 little fellow-- well, when I say a little fellow, he was
23 about what? 7, 8, 9?

24 A. He was about 9, I think.

25 Q. About 9. And his foot at that time according to
26 your checking, according to what you told the ladies and
27 gentlemen of the jury, was 7 and a half. Is that correct?

28 A. That's correct.

29 Q. Okay. Now are you aware of the fact that or do you

1 know whether or not Mr. Johnson was supposed to have checked
2 his foot later on, about a year or maybe several months
3 later?

4 A. I'm not aware of that. No, sir.

5 Q. About when was this that you say you checked the
6 man's foot or the young boy's foot?

7 A. It was just a few days after the 16th. I don't
8 remember exactly what day. It was the day we went by there
9 and retrieved some articles from the house.

10 Q. Okay, you also retrieved, yes, you retrieved from
11 some clothing from the house; is that correct?

12 A. Yes, sir.

13 Q. And ultimately that clothing was forwarded on to
14 the laboratory to be examined for any kind of evidence; is
15 that correct?

16 A. That's correct.

17 Q. And you are aware of the fact that the reason that
18 you forwarded that is you wanted to see if there was any
19 trace evidence that they can work with; is that correct?

20 A. That's correct.

21 Q. Like any blood or sweat or saliva or anything that
22 might come from the victims on the clothes; right?

23 A. That's correct.

24 Q. And that's why you sent it there?

25 A. Yes, sir.

26 Q. Okay. Now you actually took not only one pair of
27 shoes of Mr. Flowers, you actually took two pair of shoes of
28 Mr. Flowers; isn't that correct?

29 A. That's correct.

1 Q. Okay, and neither one of shoes of Mr. Flowers that
2 you took matched-- well, neither one of those matched the
3 impressions; is that correct?

4 A. That's correct.

5 Q. Did you make that determination, or did the expert
6 make that determination?

7 A. Well, it was obvious that you could make it by
8 looking at the bottom of the shoe.

9 Q. You never searched Emmitt's house because I think--
10 you have shared that with me; right? You never--

11 A. --We eliminated Emmitt Simpson on the 16th.

12 Q. Okay, and you eliminated, you said you eliminated
13 Doyle Simpson; is that correct?

14 A. That's correct.

15 Q. And it would be safe to say that you had
16 information suggesting that at certain points in the day
17 Doyle Simpson had left the building; isn't that correct?

18 A. Yes, sir. He left--

19 Q. I mean did you-- I'm not asking you when he left.
20 I am asking you did you have information that he left?

21 A. Yes, sir. I had information that he left.

22 Q. And of course, of your own personal knowledge, you
23 don't know how long he left; right?

24 A. I know, you know, what was told.

25 Q. What you were told?

26 A. Yes.

27 Q. And did you see any evidence that there was any
28 need for him to punch out when he left or anything like
29 that? Did you see any evidence of any kind of time sheets

1 which required him to punch out when he left just to go to
2 lunch or for breakfast or something like that?

3 A. Yeah, I'm not, I'm not familiar with those.

4 Q. Okay, and same thing with Mr. Simpson. You
5 actually, were you present when Mr. Simpson was encountered
6 by the police for the first time?

7 A. Which Mr. Simpson?

8 Q. Emmitt Simpson.

9 A. Emmitt. No, sir. I was not present at that time.

10 Q. You were not?

11 A. No.

12 (Defendant's Counsel confer briefly.)

13 Q. Now let me just ask you a few things about were you
14 present at the time that Mr. Porky Collins appeared in a
15 lineup? Do you know? Mr. Porky Collins was shown a picture
16 display.

17 A. I was not present.

18 Q. You were not present. Okay.

19 (Defendant's Counsel confer briefly.)

20 Q. Do you know who put together the pictures for Ms.
21 Snow's lineup?

22 A. I want to think myself and Officer Miller, but I
23 may be -- I believe I was -- I haven't seen that lineup
24 lately. You know, I don't know. I might could look at it
25 and tell you whether or not.

26 Q. I am showing you Exhibit S-92 and ask you if you
27 can tell me who put those pictures together?

28 A. I did.

29 BY MR. LUMUMBA: Okay. I don't have any other

1 questions of the officer at this time.

2 **BY THE COURT:** Okay. Are you through with the
3 board?

4 BY MR. LUMUMBA: I am.

5 **BY THE COURT:** Okay, let's move it back over
6 toward the wall.

7 BY MR. EVANS: May I proceed, Your Honor?

8 **BY THE COURT:** Yes.

9 REDIRECT EXAMINATION BY MR. EVANS:

10 Q. Mr. Matthews, were you present when Ms. Snow was
11 shown the photo lineup?

12 A. Yes, I was.

13 Q. And this is the photo lineup that she was shown; is
14 that correct?

15 A. Yes, sir.

16 Q. Did she have any hesitance in picking Doyle
17 Simpson-- I mean Curtis Flowers out of that photo lineup?

18 A. No, sir. She did not.

19 Q. And did she, in fact, put her name or initials--

20 BY MR. LUMUMBA: --Leading questions, Judge.

21 **BY THE COURT:** Don't ask him leading
22 questions.

23 BY MR. EVANS:

24 Q. Look at the lineup and see whether or not she put
25 her name or initials on any photographs on that lineup?

26 A. On the picture of Curtis Flowers she wrote her name
27 on the back of it.

28 Q. Did you or anyone else attempt to persuade her
29 which photograph -- what, if anything, did you or anyone else

1 do to persuade her which photograph to pick out of that
2 lineup?

3 A. We laid it out and let her look at it, and she
4 picked out the person that she saw there in the parking lot
5 at Angelica.

6 Q. Now you have been questioned about the notes from
7 the interview that you took of the Defendant on the 16th.
8 Did you lie in any of those notes?

9 A. Sir?

10 Q. Did you lie in any of these notes?

11 A. No, sir.

12 Q. Is this what the Defendant told you on the 16th?

13 A. Yes, sir.

14 Q. What are the large, the widest discrepancies
15 related to on the two different interviews?

16 BY MR. LUMUMBA: I object. I think that is a
17 jury question. That is not subject to his
18 opinion. May we approach?

19 BY THE COURT: Uh-hum.

20 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
21 THE JURY AS FOLLOWS:)

22 BY MR. LUMUMBA: First of all, if something is
23 in discrepancy-- now he can lay, he laid out the
24 facts of what the Defendant stated. He is not
25 entitled to invade on the province of the jury and
26 make a determination of what the discrepancies
27 are. If there are discrepancies, they have already
28 been given both statements, so they can figure it
29 out.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 2251-2400

VOLUME 26 of 30

EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 **BY THE COURT:** But he is entitled to testify as
2 to what is different between one and the other. I
3 mean he obviously can testify to that.

4 **BY MR. LUMUMBA:** Okay, well, also I don't
5 think it is an area that I went into on cross, so I
6 would like to get another opportunity to go over
7 it.

8 **BY MR. FREELON:** He didn't.

9 **BY THE COURT:** It's discrepancies between
10 who?

11 **BY MR. EVANS:** May I? The discrepancies
12 between the two statements that Curtis Flowers
13 gave.

14 **BY THE COURT:** Right.

15 **BY MR. EVANS:** He clearly went into both of
16 them and asked him questions about both statements.

17 **BY THE COURT:** I think he did. I'm going to
18 allow it.

19 **BY MR. LUMUMBA:** Now I asked questions, but I
20 didn't ask anything about any discrepancies.

21 **BY THE COURT:** No, but I don't think you are
22 limited like that. I don't think he has to respond
23 exactly to what you say. It's the area.

24 **END BENCH CONFERENCE**

25 **BY MR. EVANS:**

26 Q. You may answer that question, Mr. Matthews. What
27 were the greatest discrepancies between the statement on the
28 16th and the statement on the 18th?

29 A. It was the time that he had left the house that day

1 and where he was, at his sister's house and at Kelly's Stop
2 and Go.

3 Q. Now you have been asked by Mr. Lumumba if somebody
4 could be mistaken. At the time that he was down there on the
5 16th, did he know why he was being talked to?

6 A. Yes, sir.

7 Q. So he knew this was in relationship to what had
8 happened at Tardy's Furniture?

9 A. That's what we instructed him when he came into the
10 room, that we wanted to talk to him because he had been
11 previously employed at Tardy's, and we wanted to find out
12 about that, about his work and why he had been released.

13 Q. Now the normal operating procedure of an
14 investigator, is it necessary to attempt to find out
15 information?

16 A. Yes, sir.

17 Q. And in that attempt to find out information, is it
18 necessary to either include or exclude people as suspects?

19 A. That is correct.

20 BY MR. LUMUMBA: Judge, the questions are
21 still leading.

22 BY MR. EVANS: Your Honor, that can't be
23 directed--

24 BY THE COURT: That is overruled. Go ahead.

25 BY MR. EVANS:

26 Q. You may answer that.

27 A. Frequently you talk to individuals, and you can
28 eliminate them shortly after you, after you talk with them
29 and find out their whereabouts--

1 BY MR. LUMUMBA: --Judge, Judge, excuse me;
2 excuse me. I'm objecting. It is not within the
3 police requirements or province to eliminate
4 anybody. It is up to the jury to decide who is
5 included or eliminated. To the extent that they
6 are eliminating or-- that is totally irrelevant.
7 It is totally irrelevant, and it is invading the
8 province of the jury.

9 BY THE COURT: Of course, you asked that
10 question for sure, and then he only is testifying
11 he has eliminated him as a suspect in relation to
12 their investigation. That's all he has said. He
13 can testify to that. Overruled.

14 BY MR. EVANS:

15 Q. Now Mr. Matthews, at this point we cannot go into
16 hearsay. I'm not asking that. But in relationship to your
17 investigation as far as Doyle Simpson, who did you talk to?

18 A. Who did I talk to to eliminate?

19 Q. Yes, sir.

20 A. I talked with his supervisor. I talked with people
21 that he worked with there in the plant. I talked to Mr.
22 Simpson himself as to where he was that morning, and we were
23 able to eliminate him that way.

24 Q. All right. And on Emmitt Simpson, who did you talk
25 to to eliminate him as a suspect?

26 A. I talked to his supervisor over at IBP, and I
27 talked with him, knew his whereabouts, knew who he was with.

28 BY MR. LUMUMBA: Objection.

29 BY THE WITNESS:

1 A. Knew what he was doing.

2 BY MR. LUMUMBA: Objection.

3 BY MR. EVANS: Wait until opposing counsel's--

4 BY MR. LUMUMBA: --How can he know--

5 BY MR. EVANS: --objection--

6 BY MR. LUMUMBA: --where he was or what he was
7 doing? I object. It has got to be based on
8 hearsay.

9 BY THE COURT: Well, but that is not what he
10 is saying if I understand how he is testifying. He
11 is understanding the steps he took in the
12 investigation to either include him--

13 BY MR. EVANS: --yes, sir--

14 BY THE COURT: --or eliminate him from their
15 investigation. He is not testifying that he knew
16 where he was. He is testifying why he would have
17 eliminated him from the investigation.

18 BY MR. LUMUMBA: I understand that, Judge, but
19 what he is saying, I knew where he-- I knew this; I
20 knew that. That's what he is saying. That is his
21 words that is coming out of his mouth.

22 BY THE COURT: Okay, well, he might want to
23 rephrase his answer.

24 BY THE WITNESS:

25 A. I was able to determine where he was during the
26 time in question.

27 Q. You have been asked about the size of the DA's
28 office that is located in the Winona Police Department. Can
29 you give us an idea of how big this whole police department

1 is?

2 BY MR. LUMUMBA: Objection. There has been no
3 questions on the size of the police department.

4 BY MR. EVANS: Your Honor, he clearly went
5 into how he came in the police department and the
6 size of the DA's office. Now I am only attempting
7 to explain that.

8 BY MR. LUMUMBA: That is in a different kind
9 of hearing that had nothing to do with the jury.
10 That was never gone into as far as his
11 cross-examination was concerned.

12 BY THE COURT: I sustain that objection.
13 Let's move on.

14 BY MR. EVANS:

15 Q. All right, Mr. Matthews, without going into the
16 size, how do you get to the DA's office in the police
17 department?

18 A. Well, you walk through the front door of the
19 police department, and there is a pretty wide hall with
20 offices on each side, and the DA's office is located about
21 midway to a little over midway down that hallway. And they
22 have got an office there past the rest room facilities on the
23 other side.

24 Q. Do you have to go through any of the actual police
25 department to get to the DA's office?

26 A. Well, you just have to walk down the hall.

27 Q. Now you were asked specifically if it appeared that
28 the same pen was used where you signed your name and Curtis
29 Flowers signed his name on the waiver form. Is that correct?

1 A. Yes, sir.

2 Q. How long had it been before this morning since you
3 had fired a weapon?

4 A. Probably, maybe back during deer season.

5 Q. Okay.

6 A. Sometime maybe in January.

7 Q. You were also specifically asked about talking with
8 Dennis Woods. Who is Dennis Woods?

9 A. He is--

10 BY MR. LUMUMBA: --Objection. I didn't ask
11 anything about Dennis Woods.

12 BY MR. EVANS: Yes, sir; he did. That was one
13 of the officers that brought him to the police
14 department.

15 BY MR. LUMUMBA: Judge, I think he is in the
16 wrong hearing.

17 BY THE COURT: I think so too. Overruled-- I
18 mean sustained. Excuse me.

19 BY MR. EVANS: One second, Your Honor.

20 BY MR. LUMUMBA: I asked him if he knew who
21 Kenneth was. That's what I asked him.

22 BY THE COURT: That's right.

23 BY MR. LUMUMBA: He said he didn't know.

24 BY THE COURT: We are on Dennis right now, and
25 I sustain the objection as to Dennis.

26 BY MR. EVANS:

27 Q. Do you know who carried the Defendant to the police
28 department?

29 A. Yes. Dennis Woods and a Winona police officer.

1 Q. Okay, would that police officer be a Townsend?

2 A. I believe that's his name; yes, sir.

3 Q. During your investigation did you have an occasion
4 to make a determination of whether or not they did anything
5 to contaminate the Defendant?

6 BY MR. LUMUMBA: Objection. Objection. If he
7 wants to bring the officers in here, that is fine,
8 but we don't need any hearsay. Objection.

9 BY THE COURT: What-- state your question
10 again.

11 BY MR. EVANS: During the course of his
12 investigation, did he make any effort to determine
13 whether or not the officers that brought him to the
14 police department did anything to contaminate the
15 Defendant.

16 BY THE COURT: If it's not his own personal
17 knowledge, it would have to be hearsay. I sustain
18 that objection.

19 BY MR. EVANS:

20 Q. There have been questions asked, I believe some of
21 you, about rewards. There was a reward issued; is that
22 correct?

23 A. That's correct.

24 Q. Did you or anyone else in your presence try to get
25 anyone to change their statements of when they saw and where
26 they saw the Defendant by telling them you would give them
27 money to say anything other than the truth?

28 A. Absolutely not.

29 Q. Did you or anyone else offer anyone money to get

1 | them to tell you what they knew?

2	A. Absolutely not.
---	--------------------

3 BY MR. LUMUMBA: I would ask that that be
4 stricken as to what anybody else did.

5 BY MR. EVANS:

6 Q. In your presence?

7 BY MR. LUMUMBA: In your presence. I have no
8 problem with that question.

9 BY THE WITNESS:

10	A. No.
----	--------

11 Q. You have also been asked about picking up some
12 clothes from the Defendant's house. Is that correct?

13 A. That's correct.

14	Q. When was that done?
----	------------------------

15 | A. I believe the date was somewhere around the 20th.

16 Q. Did you have any way when y'all picked those up of
17 knowing for sure what clothes he had on at the time of these
18 murders?

19 A. No, sir. We did not.

20 BY MR. LUMUMBA: Objection, Judge.

21 BY MR. EVANS: What basis?

22 BY MR. LUMUMBA: Okay. I don't have any--
23 well, it is okay. I don't have any problem.

24 BY THE COURT: Okay.

25 BY MR. EVANS:

26 Q. When you searched the house of the Defendant, were
27 the Fila tennis shoes that would belong or have been
28 purchased in that box found in his house?

29 BY MR. LUMUMBA: Judge, I don't have any

1 problem with him testifying of what the condition
2 of the box was or what was in the box if he found
3 the box. That is not how I understood it happened,
4 but if that is the case, I have no problem with
5 that. But for the prosecution to be making
6 statements about what belonged in that box or what
7 come in that box, he doesn't know that.

8 BY THE COURT: That objection is overruled.

9 BY MR. EVANS:

10	Q. You may answer the question.
----	---------------------------------

11 A. Would you repeat it?

12 Q. When y'all searched the house of the Defendant,
13 were any ten and a half Fila Grant Hill tennis shoes found in
14 the house?

15	A. No, sir.
----	-------------

16 Q. And you know from your investigation that that is
17 the type of shoes that was originally purchased in that box,
18 do you not?

19 | A. That's correct.

20 BY MR. LUMUMBA: My objection is to that
21 question too.

22 BY THE COURT: I sustain that objection.

23 BY MR. LUMUMBA: Ask that it be stricken.

24 BY THE COURT: Strike it from the record. The
25 jury will disregard it.

26 BY MR. EVANS: May I have the Court's
27 indulgence for just a moment?

28 (State's Counsel confer briefly.)

29 BY MR. EVANS: Your Honor, may we have a

1 minute to look at the exhibit list?

2 **BY THE COURT:** Uh-hum.

3 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
4 THE JURY AS FOLLOWS:)

5 **BY THE COURT:** We are going to do a side bar?

6 BY MR. HORAN: This is a side bar. We are in
7 New England now. I want to bring to the Court's
8 attention that at least on five occasions Counsel
9 for the Defendant asked Mr. Matthews what officers
10 reported to him regarding his investigations. The
11 reason I bring that up is because Mr. Matthews can
12 testify that the officers that picked the Defendant
13 up at his residence reported to him that they did
14 not contaminate him in any way. He said that at
15 least four or five times. He got into other
16 reports from other officers, were able to go into
17 other reports that they made.

18 **BY THE COURT:** I'm not going to allow that.

19 BY MR. LUMUMBA: Judge, hold on. I'm going to
20 say this right quick. I'm going to reserve the
21 right to recall him, and I'm going to ask that he
22 produce, if we haven't already got it, - and if we
23 have got it, I have never seen it - all the reports
24 which have to do with him making checks on Doyle
25 and Emmitt Simpson in relationship to where they
26 were or whether they were involved and all that
27 stuff, to people he talked to and what he was told,
28 if there are reports like that. If there are not,
29 then I just--

1 BY MR. HORAN: --I can make him available to
2 interview him, Your Honor. That's all I can do.

3 BY MR. LUMUMBA: Okay.

4 BY THE COURT: Okay, we'll do that. Let's
5 move on right now.

6 END BENCH CONFERENCE

7 BY MR. EVANS:

8 Q. Mr. Matthews, you were specifically asked about
9 Exhibit D-17, the statement of Katherine Snow; is that
10 correct?

11 A. That's correct.

12 Q. On the second page on the next to the last line
13 when she was shown the photo lineup, what, if anything, did
14 she say and it's recorded in that?

15 A. She said-- this was Mr. Johnson talking. It says,
16 "This is the person that was leaned up against the car on
17 July the 16th between 7:00 and 7:30 A M?" And Ms. Snow's
18 answer was, "Yes, sir."

19 Q. And she was referring to this lineup and the
20 picture of Curtis Flowers; is that correct?

21 A. Yes, sir. She was.

22 Q. Were you present when the photo lineup was shown to
23 Mr. Collins?

24 A. No, sir. I was not.

25 BY MR. EVANS: Your Honor, that's all we have
26 of this witness.

27 BY THE COURT: Mr. Matthews, you can return to
28 the witness room. Who do you have next?

29 BY MR. MATTHEWS: I'm not excused?

1 **BY THE COURT:** Uh-uh.

2 WITNESS LEAVES COURTROOM.

3 BY MR. EVANS: Your Honor, at this point the
4 State of Mississippi rests on its case in chief.

5 STATE OF MISSISSIPPI RESTS.

6 **BY THE COURT:** Okay. Ladies and gentlemen,
7 I'm going to give y'all a break right now. There
8 is a matter I have to tend to outside y'all's
9 presence.

10 JURY LEAVES THE COURTROOM.

11 **BY THE COURT:** You got a motion?

12 BY MR. LUMUMBA: Yes.

13 (Defendant's Counsel confer and then Mr.
14 Freelon leaves the courtroom.)

15 BY MR. LUMUMBA: Yes, Judge. We would at this
16 time make a Motion for a Directed Verdict on the
17 sole count which is in front of the Court at this
18 time. At this time we incorporate by reference all
19 the other motions that we have previously made to
20 dismiss, those dealing with the double jeopardy
21 nature of the case as our view, those other things
22 which the Court is well aware of dealing with the
23 whole question of the admission of other evidence
24 which we feel is not properly admitted in the case
25 because it has to do with other deaths which
26 occurred on the 16th.

27 But in addition to that, we would specifically
28 address the elements of this case. This is a case
29 which claims that the Defendant, Mr. Curtis

1 Flowers, is involved in the death of the killing of
2 Mr. Stewart, BoBo Stewart on the 16th of July of
3 1996. We don't have any direct evidence of this at
4 all. So although there is a generous standard
5 which the prosecution enjoys at this point in
6 saying that the case has to be viewed in the light
7 most favorable to the prosecution, at the same time
8 there is also some problems which he encounters
9 because of the nature of the proof, the proof being
10 entirely circumstantial.

11 (Mr. Freelon reenters courtroom.)

12 There is absolutely no direct evidence that
13 Mr. Flowers was involved in any crime which means
14 that he also, they have to show that a reasonable
15 jury can meet the standards necessary to find that
16 there is no reasonable doubt as to the guilt of Mr.
17 Flowers, and which means that the hurdle that they
18 have to cross from the circumstantial point of
19 evidence is this. They have to show that there is
20 no two theories consistent, there is not a theory
21 consistent with innocence. There is not a
22 hypothesis given the facts involved here which
23 reasonably can be construed by a reasonable jury to
24 be consistent with innocence giving the testimony
25 and the facts shown by the prosecution. I think
26 they are a far stretch from that.

27 We got absolutely no direct evidence that Mr.
28 Flowers actually fired the gun at any point in
29 history which killed the people in question. We

1 have absolutely no direct evidence that Mr. Flowers
2 was in the place at all, and we don't even have
3 any-- we have, we don't have any circumstantial
4 evidence that meets the dignity of being able to
5 provide proof beyond a reasonable doubt. We are a
6 long way from it.

7 The Court has heard the evidence, and I think
8 probably listened quite carefully, but that a
9 person out of six hundred some thousand Fila shoes
10 and who knows how many copycat shoes which have
11 been sold, and even in the-- I noticed as I was
12 walking in the courtroom here. I must have seen at
13 least three or four people with Fila shoes on
14 today. You know, it's a popular brand of shoe.
15 There is no way that you can say that because
16 somebody was wearing a Fila, and the expert says he
17 can't even say for sure it was a Fila, that that
18 person can substantially be placed in the
19 building.

20 And even if they were in the building, then
21 you have another inference you have got to make.
22 You have got to infer that they were in the
23 building and did the shooting. Not just they were
24 in the building, but they did the shooting that
25 killed the people, that shot the gun that is in
26 question. None of the witnesses have seen the
27 Defendant involved in any criminal activity or
28 involved in any activity which directly relates to
29 the death of these people.

1 Katherine Snow doesn't see the Defendant with
2 the gun, doesn't see the Defendant in the car,
3 doesn't see anything which places the Defendant as
4 a person who has done anything wrong. Nobody sees
5 the Defendant with Fila gym shoes on except for
6 the next door neighbor who says she sees him with
7 Fila gym shoes on although she sees him coming in
8 at a time that he should be over there in the
9 Angelica parking lot stealing a gun if the other
10 witnesses are correct, or in the lot leaning on the
11 car because they didn't say he stole any kind of
12 gun.

13 Doyle Simpson can't even say that the gun was
14 in his car on that day. He knows he put it in the
15 car the night before at 9:15, and he knows that
16 after going in the car two or three times, that
17 then he discovered that the trunk - what do you
18 call it? - the glove compartment popped out open,
19 he said, and then at that point he noticed that
20 there was no gun there. Doyle Simpson goes into
21 the car a couple of times that day and doesn't
22 know, doesn't see any gun missing, or doesn't see
23 anything wrong with the glove compartment. And at
24 the same time in that situation the couple of times
25 that he went in are after the time that Snow is
26 supposed to have seen somebody leaning against the
27 car.

28 So I tell you, for a capital murder case where
29 somebody might be put to death, I think that that,

1 this would do the American jurisprudence system a
2 great disservice to even allow this case to go to
3 the jury on those charges. So I would ask the
4 Court using the standard which is necessary in view
5 of the fact that it is a directed verdict time as
6 well as the standard that is in effect because it's
7 a circumstantial evidence case to, in fact, direct
8 a verdict of not guilty on the charges as they are
9 presently in this indictment.

10 You have to make so many jumps and conclusions
11 that it's absolutely, you know, and then to think
12 without any evidence of it, that we are going to
13 assume a motive that Mr. Flowers wanted to kill
14 somebody because they withheld \$82.00 in a check
15 without any proof that that was actually the case,
16 I think that it's a disservice, like I said, to the
17 system. So I would ask that it be dismissed.

18 Hold on one second.

19 (Defendant's Counsel confer briefly.)

20 BY MR. LUMUMBA: And the robbery charge in
21 specific, also I don't think that we have
22 determined that any money was actually taken.
23 Actually I guess it can be argued that there is
24 some evidence to the contrary, whether a robbery
25 occurred. No one really knows what-- Ms. Rigby had
26 just come from the bank, put money the bank.
27 Nobody really knows what money was actually in the
28 cash register.

29 But in addition to that, I think that it

1 should be pointed out that the situation as far as
2 the valuables which were still on people, no
3 apparent attempt to take valuables. There was
4 still some money in the drawer albeit change, and
5 there was money in a purse. I think the testimony
6 shows there was money in a purse there, and I think
7 it still had \$10.00 or I don't remember how much it
8 was, that wasn't taken. So I think that the purse
9 was right in the middle of the floor, and each of
10 the people who were still on the scene according to
11 the pathologist actually still had valuables on
12 them. So I think there is even inferences to the
13 contrary as relates to any kind of robbery which
14 means that you have to dismiss the capital murder
15 charge.

16 (Defendant's Counsel confer briefly.)

17 BY MR. LUMUMBA: We also don't have any
18 evidence of-- the person who the crime scene
19 examiner came to the scene some three hours, I
20 believe, after the incident occurred. And at the
21 time that she came, we don't know who had or had
22 not been in the drawer and what had been taken out
23 even after the incident may have occurred.

24 So I would say to the Court that there is not
25 a substantial evidence or sufficient evidence on
26 the robbery or on the murder count and ask that one
27 or both of them be dismissed. I ask that one and
28 both of them be dismissed.

29 BY MR. EVANS: Very briefly, Your Honor, the

1 Court has heard the evidence. I'm not going to go
2 back through it. We have clearly proven every
3 element. It may be by circumstantial evidence, but
4 we have clearly proven every element that we must
5 prove, and there is no grounds for the case to be
6 dismissed at this point.

7 **BY THE COURT:** Mr. Lumumba has correctly
8 stated what the standard is, and that is at this
9 point in time I must consider it in the light, the
10 evidence in the light most favorable to the State.
11 And therefore the Motion is overruled.

12 Let me see y'all just a second.

13 (CONFERENCE AT THE BENCH WITH THE JURY OUT AS
14 FOLLOWS:)

15 **BY THE COURT:** Y'all want to take about 15 or
16 20 minutes for y'all to get ready?

17 **BY MR. FREELON:** Give us about thirty.

18 **BY THE COURT:** Thirty? Okay.

19 **BY MR. FREELON:** We are not going to be long.

20 **BY MR. LUMUMBA:** Well, we have witnesses that
21 ain't here today that we plan to call on Monday.

22 **BY THE COURT:** Well, I know you have got one.
23 What about--

24 **BY MR. LUMUMBA:** Well, you know, we have
25 really got a few others, Judge, because we had no
26 idea that--

27 **BY THE COURT:** --Okay.

28 **BY MR. FREELON:** We may call some others.

29 **BY THE COURT:** Well, you have got some you can

1 put on today though?

2 BY MR. LUMUMBA: We have got--

3 BY MR. FREELON: --We have got some. We have
4 got some here.

5 BY THE COURT: Okay, well, let's get those out
6 of the way.

7 BY MR. FREELON: We have got some we can put
8 on today.

9 BY THE COURT: Thirty minutes?

10 BY MR. FREELON: Thirty minutes, Your Honor.

11 BY MR. EVANS: Are you going to bring them
12 back in or just take a--

13 BY THE COURT: --I'm just going to take the
14 break. I will leave them out and take the break,
15 and they can go smoke or whatever.

16 END BENCH CONFERENCE.

17 (FOLLOWING A LENGTHY AFTERNOON RECESS ON MARCH
18 27, 1999, THE TRIAL PROCEEDED IN OPEN COURT WITH
19 THE COURT, ALL COUNSEL, AND THE DEFENDANT PRESENT:)

20 BY THE COURT: You can bring the jury in. Who
21 will be your first witness, Mr. Lumumba?

22 BY MR. LUMUMBA: Latarsha Blissett.

23 JURY ENTERS COURTROOM.

24 BY THE COURT: Latarsha Blizzard?

25 BY MR. LUMUMBA: Blissett.

26 (Witness enters courtroom.)

27 BY THE COURT: Have you been sworn, ma'am?

28 BY THE WITNESS: No.

29 BY THE COURT: Would you raise your right

1 hand.

2 **LATARSHA BLISSETT,**

3 a black female called as a witness by the Defendant, having
4 first been duly sworn, testified as follows, to-wit:

5 **BY THE COURT:** Have a seat right there,
6 please. State your name for the record.

7 **BY THE WITNESS:** Latarsha Blissett.

8 **BY THE COURT REPORTER:** Would you spell it,
9 please.

10 **BY THE WITNESS:** L A T A R S H A. B L I S -
11 S E T T.

12 **DIRECT EXAMINATION BY MR. LUMUMBA:**

13 Q. Ms. Blissett, could you tell me, please, where is
14 it that you live?

15 A. In Winona.

16 Q. And how long have you lived in Winona?

17 A. 21 years.

18 Q. Do you have a family in Winona?

19 A. Yes.

20 Q. What does that consist of?

21 A. My mom, sister and brother.

22 Q. Now Ms. Blissett, do you know a person by the name
23 of-- well, secondly, do you work?

24 A. Yes.

25 Q. What kind of work do you do?

26 A. I work in a factory.

27 Q. Okay.

28 A. Braizen.

29 Q. Okay. Do you know a person by the name of Curtis

1 Flowers?

2 A. Yes.

3 Q. And do you see him in the courtroom here?

4 A. Yes.

5 Q. Point to him, please.

6 A. (Witness points.)

7 BY MR. LUMUMBA: For the record Ms. Blissett
8 has identified Mr. Flowers.

9 Q. And how do you know Mr. Flowers?

10 A. That's my boy friend's cousin.

11 Q. And do you also know somebody by the name of
12 Clemmie Fleming?

13 A. Yes.

14 Q. And how do you know Ms. Fleming?

15 A. That's my cousin.

16 Q. Ms. Fleming is your cousin?

17 A. Yes.

18 Q. Now Ms. Blissett, I really don't have a lot to ask
19 you, but I just want to ask you this question, and I want you
20 to talk to the ladies and gentlemen of the jury. Explain to
21 them if you have ever had an opportunity to talk to Flemmie
22 [sic] about situations concerning this case?

23 A. Yes, I talked to her.

24 Q. And what did she say? You can go ahead and
25 explain.

26 A. She told me--

27 BY MR. HORAN: --Objection. Your Honor, I
28 would like for him to further qualify this
29 particular statement as to time and place.

1 BY MR. LUMUMBA:

2 Q. Okay. Was this-- where were you at when what you
3 are about to tell us about what Flemmie said, where were you
4 at?

5 A. When we talked the first time, I was at my house.

6 Q. Okay, where was she at?

7 A. She was at my house too.

8 Q. Okay, and when was this that this conversation took
9 place?

10 A. Well, I can't give you the exact date, but I know
11 it was after the first hearing.

12 Q. Okay. Was it still kind of close to the first
13 hearing?

14 A. Yes.

15 Q. Okay, could you tell the ladies and gentlemen of
16 the jury what conversation took place and what was said?

17 A. She come up to my house, and she told me that if
18 she seen Curtis Flowers running downtown from Tardy's store,
19 that they will pay off her furniture note. They will give
20 her the money to pay off her furniture note. And she told me
21 that she said that, and she didn't receive no money.

22 Q. Now did you have a conversation with her any time
23 after that?

24 A. Yes. Friday.

25 Q. Okay, and then what was at that time?

26 A. She told me that she was going to tell the truth,
27 that she didn't see Curtis, and her furniture still wasn't
28 paid off.

29 Q. So she indicated to you at that time she was going

1 to tell the truth?

2 A. Yes.

3 Q. And what did she tell you at that time the truth
4 was?

5 A. That she did not see Curtis.

6 Q. Okay. Ms., Ms. Blissett, were you ever interviewed
7 in connection with this case before?

8 A. Yes.

9 Q. Okay. And who, and do you know-- tell us about
10 that, when that occurred and how it occurred.

11 A. I was at school one day, and the superintendent
12 come to the school and to the room where I was at, and he
13 said he needed some help across the street in his office, and
14 I hold my head down so he wouldn't call he. And he still
15 called me. He said, "Well, I want her to help me," just like
16 that. So we went across the street, and we get over there,
17 they go, uh, Johnny Jones, Johnny somebody's car and a lady--

18 Q. --Could it have been Johnny Johnson?

19 A. Yeah. I know his face. And a lady and they told
20 me that I was going to go with them and stuff. And we left
21 Winona and went to Greenwood to this other little place, and
22 the whole time we was riding I didn't know where they were
23 carrying me. I didn't know where we were going, and I didn't
24 know what for. I was just riding.

25 Q. At any point in time was anything said to you about
26 any money?

27 A. No, not while we was in the car.

28 Q. Okay, how about where you got? Where did you go
29 to?

1 A. Went to Greenwood to, I think it was the highway
2 patrolman place. I don't know, but it was some kind of
3 place.

4 Q. At that time did anything, once you arrived there,
5 did anything get said to you about any money?

6 A. Yes.

7 Q. Tell me what it was.

8 A. They, he asked me do I know what thirty thousand
9 dollars can buy? I told him, "Yes, I know." He said,
10 "Well, we know you are trying to get a trailer house, you
11 and your boyfriend." I said, "Yeah." "Well, you know thirty
12 thousand dollars can buy a trailer, and you still would have
13 some money left over." And I was like, "Yeah. I know what
14 thirty thousand dollars can do," but he was making sure that
15 I knew. He didn't really--

16 Q. --Who actually said that?

17 A. The guy that was, the guy that was driving the car,
18 the guy that picked me up.

19 Q. Do you know his first name?

20 A. Um, Johnny Johnson or that guy.

21 Q. You know him when you see him?

22 A. Yes.

23 (Defendant's Counsel confer briefly.)

24 Q. Finally, Ms. Blissett, I just have one other
25 question. Did they say anything about Curtis Flowers or did
26 anybody--

27 BY MR. HORAN: --Objection, Your Honor. He
28 needs to not lead the witness.

29 BY THE COURT: Sustained.

1 BY MR. LUMUMBA:

2 Q. Was anything mentioned about anybody here in this
3 courtroom?

4 A. Yes.

5 Q. Who--

6 BY MR. HORAN: --Your Honor, first of all, he
7 hasn't laid the proper predicate for any of this.
8 It is hearsay first of all. Any particular witness
9 that said this, he has not put that particular
10 witness on the stand and given them the opportunity
11 to--

12 BY THE COURT: Sustained.

13 BY MR. LUMUMBA: Okay, I agree with that. I
14 reserve the right to recall Ms. Blissett after we
15 put that witness on the stand. I have no further
16 questions on the topics which we discussed.

17 CROSS-EXAMINATION BY MR. EVANS:

18 Q. Ms. Blissett, what is the relationship of you and
19 the Defendant?

20 A. None.

21 Q. What did you say it was while ago? He is your boy
22 friend's cousin? Is that what it is?

23 A. Yes.

24 Q. Have you asked Clemmie Fleming to lie for him?

25 A. No.

26 Q. You have never asked her to lie to try to help him
27 get out of jail?

28 A. No.

29 Q. And do I understand what you are saying is these

1 officers that you didn't know, don't even know who they are,
2 came up here and took you to Greenwood to be questioned; is
3 that right?

4 A. Yes.

5 Q. You didn't know them?

6 A. (No response.)

7 Q. You didn't know them?

8 A. I didn't know their names, not at the time. They
9 introduced theirselves, and we talked and stuff.

10 Q. Okay, they didn't know you?

11 A. Yeah. He knew me.

12 Q. How did he know you?

13 A. He knowed my dad.

14 Q. Who knew your dad?

15 A. The Johnny Johnson guy.

16 Q. And you are not trying to tell this jury that you
17 knew anything about what happened on the day the murders
18 happened?

19 A. No.

20 Q. Is that right? And you're saying that Clemmie
21 told you that she was going to tell the jury the truth?

22 A. Yes.

23 Q. But it's your version that Clemmie told you that
24 that wasn't the truth; is that right?

25 A. I don't understand your question.

26 Q. You are saying that Clemmie didn't see him; is that
27 right?

28 A. That's what Clemmie told me.

29 Q. It's the first time you have ever mentioned this to

1 any of us, isn't it?

2 A. No.

3 Q. Oh, is it not? Do you remember the time you are
4 talking about earlier?

5 A. I don't understand what you are saying.

6 Q. Are you sure you don't?

7 A. Repeat your question.

8 Q. You have never told us what you are trying to say
9 today, have you?

10 A. Oh, yes.

11 Q. When?

12 A. When I was questioned, I told the people that
13 questioned me.

14 Q. Who?

15 A. When I talked to the lawyers and stuff, I told them
16 what Clemmie told me.

17 Q. The lawyers and stuff, the lawyers I'm talking
18 about, you have never told me this?

19 A. No.

20 Q. You have never told Mr. Horan this?

21 A. No, I ain't never seen him.

22 Q. And Curtis Flowers is your boy friend's cousin?

23 A. Yes.

24 Q. And you want to help him, don't you?

25 A. I just want to tell truth.

26 (State's Counsel confer briefly.)

27 Q. Now to make sure that I understand what you are
28 saying; you are saying that after the last hearing, she told
29 you this; is this correct?

1 A. Yes.

2 Q. And the last hearing she said she saw Curtis
3 running from the store, didn't she?

4 A. Yes.

5 Q. And it's your version that she says because she
6 didn't get her furniture paid off, she was going to change
7 that?

8 A. She was going to tell the truth.

9 Q. Are you familiar that she told the jury here in
10 this case that she saw Curtis running from Tardy Furniture?

11 A. I don't know what she told the jury. I wasn't in
12 here.

13 Q. All right. And if she did, that's the exact same
14 thing she said before, isn't it?

15 A. She just told me that she was going to tell the
16 jury that she seen Curtis running downtown from the store
17 because they were going to pay off her furniture note.

18 Q. When did she tell you that according to you?

19 A. After the first hearing. It was probably like a
20 week or so, wasn't even long.

21 Q. We are talking about how many months ago?

22 A. It has been a lot of months. About -- it was in
23 October when the hearing was. It was like after the
24 hearing. '97.

25 (State's Counsel confer briefly.)

26 Q. You are not very close with Clemmie Fleming, are
27 you?

28 A. We, um, talk off and on on the phone and stuff like
29 that. She come to my house. I fix her hair.

1 Q. You and several other family members have given her
2 a real rough time lately, haven't you?

3 A. No. She was up to my house Friday.

4 Q. Y'all have been harassing her and trying to get her
5 to change her story--

6 BY MR. LUMUMBA: --Judge--

7 A. --No, sir.

8 BY MR. LUMUMBA: --the only thing I ask is
9 that she be allowed to finish her answer.

10 BY THE WITNESS:

11 A. Uh-uh.

12 BY MR. EVANS: I thought she was through.

13 BY THE COURT: I thought she was too.

14 BY MR. EVANS:

15 Q. Y'all have been harassing her and trying your best
16 to get her to change her story, haven't you?

17 A. Uh-uh.

18 Q. But she has never changed it, has she? She has
19 testified to the same thing that she has told before?

20 A. She calls me talking about it all the time.

21 Q. According to you. Is that right?

22 A. It's on tape of me and her talking on the phone.

23 Q. Well, how about producing a copy of it to us?

24 A. I don't have a tape.

25 BY MR. EVANS: No further questions.

26 BY THE WITNESS:

27 A. Not with me.

28 BY MR. LUMUMBA: Let me, just a couple of
29 questions.

1 REDIRECT EXAMINATION BY MR. LUMUMBA:

2 Q. I want to ask you the questions and let you give
3 the answers. I don't want to give them. Let me ask you
4 this. What is Clemmie to you? Let me see if I understand
5 that.

6 A. My cousin.

7 Q. Who did you know first, Curtis or Clemmie?

8 A. Clemmie.

9 Q. How long has Clemmie been your cousin?

10 A. For 21 years. We grewed up together, stayed
11 together and stuff.

12 Q. Have y'all, what kind of relationship have y'all
13 had throughout the years?

14 A. We been all right talking and go places together
15 and do everything.

16 Q. And are you telling, are you saying anything
17 about-- is what you are saying about what Clemmie told you
18 true?

19 A. Yes.

20 Q. Has anybody at all asked you to be untruthful about
21 this case?

22 A. No.

23 Q. Okay. If someone was to tell you to lie for Curtis
24 Flowers, would you do it?

25 A. No.

26 BY MR. LUMUMBA: I have no further questions
27 of this witness.

28 BY THE COURT: You may return to the witness
29 room.

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WITNESS LEAVES COURTROOM.

BY THE COURT: Who will you have next?

BY MR. LUMUMBA: We would ask to call Mary Fleming.

BY THE COURT: Can I see y'all up here while she is coming.

(CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE JURY AS FOLLOWS:)

BY THE COURT: I just want to reiterate this because of what she almost did in that testimony.

BY MR. HORAN: She did, Your Honor.

BY MR. LUMUMBA: No, she said hearing.

BY THE COURT: Well, I know she didn't, she said hearing.

BY MR. LUMUMBA: Hearing.

BY THE COURT: Shhhh.

BY MR. LUMUMBA: I'm sorry.

BY THE COURT: I don't want them to do that, so if y'all-- have y'all talked to your witnesses?

BY MR. LUMUMBA: I talked to her.

BY THE COURT: All right.

BY MR. LUMUMBA: That's why she said hearing.

BY THE COURT: All right, I'm just concerned, and I want to make sure y'all watch what you ask; okay?

BY MR. LUMUMBA: Okay.

BY THE COURT: One other thing. Your investigator is going to need to sit behind you. I need the lawyers up front, okay.

1 (Defense Counsel confer among themselves about
2 telling the next witness to say "hearing.")

3 BY MR. LUMUMBA: He can tell her that.

4 END BENCH CONFERENCE.

5 (Mr. Freelon left the courtroom.)

6 BY THE COURT: Have you been sworn, Ms.
7 Fleming?

8 BY THE WITNESS: No, sir.

9 BY THE COURT: Would you raise your right
10 hand.

11 MARY ELLA FLEMING,

12 a black female called to testify as a witness by the
13 Defendant, having first been duly sworn, testified as
14 follows, to-wit:

15 BY THE COURT: Have a seat right there,
16 please. State your name for the record.

17 BY THE WITNESS: Mary Ella Fleming.

18 DIRECT EXAMINATION BY MR. LUMUMBA:

19 Q. Could you do that for me one more time, a little
20 louder?

21 A. Mary Ella Fleming.

22 Q. And Ms. Fleming, where is it that you live?

23 A. At 202 Academy Street.

24 Q. And what city do you live in?

25 A. In Winona.

26 Q. Ms. Fleming, do you, are you employed?

27 A. Yes, sir.

28 Q. Could you tell the ladies and gentlemen of the jury
29 what it is you do?

1 A. I'm a CNA. I do home health. I work at Tyler
2 Holmes Hospital.

3 Q. Okay, and how long have you been doing that?

4 A. I worked at Tyler Holmes Hospital for almost three
5 years, and I just started in November at MedShares.

6 Q. Do you have a family?

7 A. Yes, sir.

8 Q. What does that consist of?

9 A. (No response.)

10 Q. Do you have children?

11 A. Yes, sir. I have two.

12 Q. Okay, what is their ages?

13 A. 11 and 9.

14 Q. Okay, do you have brothers and sisters?

15 A. Yes, sir.

16 Q. And how many brothers and sisters do you have?

17 A. I have three brothers and five sisters.

18 Q. And is your family basically from Winona?

19 A. Yes, sir.

20 Q. Okay, and what I would like to ask you now is if
21 you know a person by the name of Clemmie Fleming?

22 A. Yes, sir.

23 Q. And what is she to you?

24 A. My sister.

25 Q. Okay. Ms. Fleming, can you share with me, please,
26 if you ever had any contact-- first of all, where did you say
27 you live? I'm sorry.

28 A. At 202 Academy Street.

29 Q. Okay. Do you recall the day that the incident

1 happened on, with relationship to Tardy Furniture?

2 A. Yes, sir.

3 Q. Okay. And it is the day that some people died in
4 Tardy Furniture?

5 A. Yes, sir.

6 Q. Can you share with me if you saw your sister on
7 that day?

8 A. Yes, sir.

9 Q. Tell the ladies and gentlemen of the jury where she
10 was when you saw her?

11 A. She came to my house.

12 Q. And when she came to your house, tell us what
13 happened from there. Tell them.

14 A. My brother called me that morning concerning a
15 bill, and when Clemmie came over that morning, I told her
16 about it. And she told me she had talked to Ms. Tardy, and
17 Ms. Tardy had told her she could pay ten or fifteen dollars
18 on her bill. And I told her -- she was going to go down
19 there, and I said, "Well, let's not go right now because I'm
20 going to go with you when I put on some clothes." And she
21 said okay. But I never, we never did go down there. By
22 that time a friend came and told us that Ms. Tardy was
23 killed. And me, my sister Neechie and Clemmie and BT went
24 down there.

25 Q. You went down where?

26 A. Down to Tardy Furniture.

27 Q. Did Clemmie at any point say anything to you--

28 BY MR. HORAN: --Objection.

29 BY MR. LUMUMBA: Can I get the question out,

1 please?

2 **BY THE COURT:** Uh-hum.

3 BY MR. LUMUMBA:

4 Q. Did Clemmie at any point ever say anything to you
5 about seeing Curtis Flowers?

6 A. No.

7 Q. Did she say that she knew anything about seeing Mr.
8 Flowers running--

9 BY MR. HORAN: --Your Honor, he is leading
10 this particular witness.

11 **BY THE COURT:** You can't lead her.

12 BY MR. LUMUMBA:

13 Q. Did you ever hear any discussion from her with
14 relationship to anything related to the store or anything
15 about it?

16 A. No, sir.

17 Q. And she was, where was she at at the time?

18 A. At my house.

19 Q. And where did you go from there?

20 A. Went down to Tardy Furniture.

21 Q. About what time, if you can recall, did your sister
22 come to your house? What time did she arrive at your house
23 about if you can tell me?

24 A. Maybe 9 or 10 o'clock.

25 Q. Were you keeping time or timing or anything?

26 A. No, sir.

27 BY MR. LUMUMBA: I have no further questions
28 for this witness.

29

1 CROSS-EXAMINATION BY MR. HORAN:

2 Q. Ms. Fleming, my name is Kevin Horan. If I ask you
3 something that you don't understand, please ask me to repeat
4 it, and I will if I can. And also, if you would, if I ask
5 you a yes or no answer, please answer in that fashion and
6 then explain your answer; okay?

7 A. Okay.

8 Q. Would you please do that for me?

9 A. Yes, sir.

10 Q. Now Ms. Fleming, were you aware of the fact that,
11 or are you aware of the fact that Clemmie has previously
12 testified in a hearing regarding the identification of the
13 Defendant Curtis Flowers in reference to the Tardy Furniture
14 killings? Are you aware of that right now?

15 A. Have I heard about it?

16 Q. Are you aware of the fact that prior to this date
17 that she has testified in a previous hearing regarding the
18 identification of Curtis Flowers in reference to the Tardy
19 Furniture killings? Are you aware of that fact?

20 A. Yes, sir.

21 Q. And you are aware of the fact that on or about
22 September the 12th of 199-- I believe it was '97, that she
23 was summonsed by lawful, subpoenaed by lawful subpoena to
24 that particular hearing? Are you aware of that fact? You
25 are her sister?

26 A. Yes, sir.

27 Q. You are aware of that?

28 A. Uh-hum.

29 Q. And I think that subpoena required her to stay in a

1 certain location for a period of a week, did it not? I mean
2 she was under subpoena for an extended period of time?

3 BY MR. LUMUMBA: Judge, I would object.

4 BY THE COURT: Come up here.

5 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
6 THE JURY AS FOLLOWS:)

7 BY THE COURT: I am not going to allow that
8 line of questioning about that. You don't have to
9 do that to ask her, to cross-examine her, and I'm
10 not going to allow you to get on that dangerous
11 level with her.

12 BY MR. HORAN: She was under subpoena. This
13 is her sister. She had knowledge prior to the time
14 that the woman testified?

15 BY THE COURT: You are not going to question
16 her about any previous hearing or anything related
17 to it. I am not going to allow that.

18 BY MR. HORAN: That she was, she knew that she
19 testified about--

20 END BENCH CONFERENCE.

21 BY THE COURT: --Ladies and gentlemen, there
22 is a matter I have got to hear outside y'all's
23 presence.

24 JURY LEAVES COURTROOM.

25 BY THE COURT: Make your point.

26 BY MR. HORAN: What is the objection? I
27 didn't hear an objection.

28 BY THE COURT: Okay, well, I have got an
29 objection to it. I'm not going to allow you to

1 elicit testimony of that first trial--

2 BY MR. HORAN: --I'm not trying to elicit
3 testimony--

4 BY THE COURT: --in this trial. Well, you
5 just asked her about it--

6 BY MR. HORAN: I didn't ask her about any
7 testimony. I asked her if the witness was
8 subpoenaed. She has knowledge that this witness
9 was--

10 BY THE COURT: --You asked her about did she
11 identify somebody at the previous hearing. That's
12 what you asked her.

13 BY MR. HORAN: Okay, I did that.

14 BY THE COURT: And it ain't but one time she
15 has done that.

16 BY MR. HORAN: That's right, Your Honor.

17 BY THE COURT: Okay.

18 BY MR. HORAN: But my point is I want to know
19 whether or not she had knowledge that she went up
20 there for that purpose, and that she was going up
21 there for that particular, and for that purpose.
22 She came in September the 7th, 1998, is the first
23 time she told anybody about this statement from her
24 sister; two years or a year and a half after that
25 particular statement was made to an investigator.
26 She should be impeached on that, Your Honor.

27 BY THE COURT: Okay. You are not going to be
28 able to impeach her with questions that would
29 elicit stuff that would show to this jury that

1 there has ever been a trial in this case. I'm not
2 going to allow you to do it, Mr. Horan. You can
3 make your point with the jury and argue to the jury
4 about the fact that she waited this late. But as
5 far as going back to elicit that testimony, I'm not
6 going to allow it.

7 BY MR. HORAN: Can I get into the fact that
8 she knew -- never mind. I will just go another
9 way.

10 BY THE COURT: Okay. I am ready for the jury
11 back.

12 BY MR. HORAN: Your Honor, let me ask-- can I?

13 BY MR. FREELON: Hold on a second.

14 BY MR. HORAN: Can I-- just one thing. Close
15 the door. It is going to be improper for me to ask
16 her if she has ever testified under oath about this
17 particular fact before?

18 BY THE COURT: Ask this lady?

19 BY MR. HORAN: Yeah.

20 BY THE COURT: You can ask her that.

21 BY MR. HORAN: All right.

22 BY MR. LUMUMBA: Judge, how is that relevant?
23 Let me say I don't really care about that question
24 other than it almost assumes that maybe somebody
25 knows that there was another trial, and you just
26 want to-- let me finish.

27 BY MR. HORAN: I'm not saying anything.

28 BY MR. LUMUMBA: Maybe somebody knows about
29 another trial, and what he is trying to imply is

1 that she didn't come forth at that trial. I don't
2 understand how that question would have relevance
3 other than that, and I don't even think it is
4 relevant then. You see my-- that's my concern.

5 **BY THE COURT:** Yeah, I see your point, but I
6 think he can ask it because it shows-- there is
7 some evidence that she has not come forth until she
8 did, and you can ask her about coming forth the
9 first time you ever heard of it is September 7th.

10 **BY MR. HORAN:** I understand that. Porky
11 Collins was asked and was specifically asked by Mr.
12 Lumumba: We had a previous hearing involving the
13 identification of Curtis Flowers, and he was asked
14 specifically that. That is exactly--

15 **BY THE COURT:** --What did the Court say? What
16 did the Court say when he was asked that too? What
17 did the Court tell y'all?

18 **BY MR. HORAN:** You said--

19 **BY THE COURT:** I said I didn't want that
20 before this jury. Now why in the world you want to
21 put something prejudicial like that before this
22 jury is beyond me.

23 **BY MR. HORAN:** That is not prejudicial. We
24 have been talking about the hearings and the
25 identifications in prior testimony in hearings
26 without going into the fact that there was a trial
27 involved.

28 **BY THE COURT:** Porky had a hearing other than
29 the trial. I-- you are just on dangerous ground,

1 Mr. Horan, in my opinion.

2 BY MR. HORAN: I will get away from it. I
3 don't see how there has been any way, in any shape,
4 form or fashion prejudicial to this Defendant to
5 ask her whether or not her sister was subpoenaed to
6 testify on the identification of this Defendant.

7 BY MR. LUMUMBA: Judge--

8 BY MR. HORAN: --regarding the identification
9 of this Defendant under oath, this girl, her sister
10 being under oath at that time.

11 BY MR. LUMUMBA: Excuse me. Let me say this,
12 Judge. My, I would have a concern other than the
13 ones that the Court has already raised, I think
14 that to ask her if her sister was subpoenaed is
15 really hearsay unless she knows, unless she saw her
16 being subpoenaed.

17 BY THE COURT: If she says she knows, she can
18 answer it.

19 BY MR. LUMUMBA: If she knows any way other
20 than hearsay.

21 BY THE WITNESS: It was hearsay.

22 BY MR. LUMUMBA: See, I don't think she has
23 any personal knowledge.

24 BY THE COURT: There are ways to elicit this
25 testimony without reference to the other hearing.

26 BY MR. HORAN: And I will do it.

27 BY THE COURT: There are ways to do that.

28 BY MR. HORAN: I will do it.

29 BY THE COURT: Are we through? Are we ready

1 to start over?

2 BY MR. HORAN: We are through.

3 BY THE COURT: Okay.

4 JURY ENTERS COURTROOM.

5 BY MR. HORAN: Ms. Fleming-- may I proceed,
6 Your Honor?

7 (The Court nods his head.)

8 CONTINUED CROSS-EXAMINATION BY MR. HORAN:

9 Q. Ms. Fleming, now the first time that you gave any
10 taped statement regarding what you have testified here today
11 was to either Counsel for the Defendant, Mr. Lumumba or one
12 of his associates was I believe on about September the 7th of
13 1998. Is that correct?

14 A. Yes, sir.

15 Q. Okay. And you would admit, would you not, that
16 either through what knowledge you gained that your sister
17 Clemmie Fleming had talked with John Johnson with the DA's
18 office -- you knew that, did you not?

19 A. No, I didn't.

20 Q. You did not know that until September the 7th of--

21 A. --I didn't know Clemmie had even talked to anybody.

22 Q. Regarding this particular Tardy Furniture Store
23 killing?

24 A. I work two different jobs. I don't keep up with
25 Clemmie.

26 Q. You mean from July the 16th, 1996, until September
27 the 7th, 1998, you had no knowledge that Clemmie Fleming made
28 any statement to any law enforcement officer--

29 A. --no--

1 Q. --implicating the Defendant?

2 A. No, I didn't. No.

3 Q. But you would admit to me, would you not, that
4 September the 7th, 1998, is the first time that you talked to
5 anybody, whether it be any investigator with the Mississippi
6 Highway Patrol--

7 A. Do what now?

8 Q. I'm not through yet. You didn't talk to any
9 investigator with the Mississippi Highway Patrol or John
10 Johnson or anything, anybody like that, any law enforcement
11 agent--

12 A. Did I talk to them?

13 Q. Right.

14 A. No, I didn't.

15 Q. Well, tell me this then. If you didn't know that
16 Clemmie had made these particular statements, how did you
17 come to be interviewed by anybody?

18 A. I didn't know Clemmie had even talked to anybody
19 until that--

20 Q. --That is not my question.

21 A. Well, what did you say?

22 Q. How did anyone know that you had any knowledge if
23 you didn't know that Clemmie made these particular
24 statements?

25 BY MR. LUMUMBA: Judge, may I object to that?
26 I think that calls for her to read some other
27 people's minds.

28 BY THE COURT: No, it calls for her to know
29 why she did it. That's what he asked her.

1 BY MR. LUMUMBA: Okay, if she knows.

2 BY THE COURT: Well, she should know why she
3 did it.

4 BY MR. LUMUMBA: Oh. Okay, I didn't
5 understand that to be the question.

6 BY MR. HORAN:

7 Q. Why did you provide a taped statement to Mr.
8 Lumumba's office?

9 BY MR. LUMUMBA: I don't have a problem with
10 that.

11 BY MR. HORAN:

12 Q. Nobody knew-- I mean, strike that. If you didn't
13 know that Clemmie had anything to do with this case?

14 A. I didn't know it at the time. When Clemmie went up
15 there to that hearing, I didn't know anything.

16 Q. That's my point. So there is really no reason for
17 anyone to have gone and interviewed you, was it? No one knew
18 that you had any knowledge about what Clemmie had said to
19 anybody; right? That's what your testimony is here today. I
20 mean I'm not trying to badger you, Ms. Fleming, but that is
21 your testimony here today?

22 BY MR. LUMUMBA: Objection. She hasn't
23 testified that no one had any knowledge that she
24 knew anything. She hasn't said that.

25 BY MR. HORAN: That is what she is
26 testifying--

27 BY MR. LUMUMBA: --No, no. What she said is
28 nobody-- she had talked to nobody about Clemmie.
29 That's what she said. That doesn't--

1 BY MR. HORAN: --My question revolves around
2 whether or not she had any knowledge that Clemmie
3 had made any statements to anybody, Your Honor.
4 Therefore, why would she have been a potential
5 witness? That's the point I am making.

6 BY MR. HORAN:

7 Q. Now you talked to Clemmie prior to her testifying
8 in this trial; right? Downstairs on Monday?

9 A. Yes. Yes, I-- on where?

10 Q. On Monday or Tuesday of this week.

11 A. It was Thursday.

12 Q. It was Thursday. Prior to her testimony, you did
13 have a conversation with her, didn't you?

14 A. Yes, I did.

15 Q. And you told her to come up here and to save Curtis
16 Flowers?

17 A. No, I didn't.

18 Q. Go up there and save him?

19 A. No, I didn't. I told her--

20 Q. --You deny making that statement?

21 A. I told her to tell the truth.

22 Q. Okay, you are saying that you did not make that
23 statement?

24 A. No, I didn't.

25 BY MR. HORAN: No further questions.

26 BY MR. LUMUMBA: I just have a couple of
27 questions.

28 REDIRECT EXAMINATION BY MR. LUMUMBA:

29 Q. Now Ms. Fleming, who was the first person from my

1 office to contact you? Do you know who? If you know?

2 A. The guy right, the guy sitting right there.

3 Q. This gentleman here?

4 A. Uh-hum.

5 Q. Mr., for the record I think the witness has
6 identified Attorney Freelon. Do you have any idea how
7 Attorney Freelon came up with any information that he had?

8 A. No, sir.

9 Q. Or why he wanted to talk to you?

10 A. No, sir.

11 Q. Can you read his mind?

12 A. No, sir.

13 Q. Did you understand that he was supposed to be a
14 lawyer?

15 A. Yes, sir.

16 Q. When he contacted you?

17 A. Yes, sir.

18 Q. Did you understand that the lawyer's job is to
19 investigate?

20 A. Yes, sir.

21 Q. Did you come, did you come volunteer any
22 information to anybody?

23 A. No, sir.

24 Q. Or did somebody come to you?

25 A. They came to me.

26 Q. And when they came to you and asked you questions,
27 did you answer those questions?

28 A. Yes, sir.

29 Q. And did you answer them truthfully?

1 A. Yes, sir.

2 Q. Was there any reward out for talking to us?

3 A. No, sir.

4 Q. Was anybody going to pay your furniture?

5 A. No, sir. I pay my own bills.

6 Q. How many jobs you got?

7 A. Two.

8 (Mr. Lumumba confers with his investigator.)

9 Q. And the final thing I have is what is Clemmie to
10 you?

11 A. My sister.

12 Q. Do you know Mr. Flowers?

13 A. Yes, sir.

14 Q. Is he anything to you?

15 A. Nothing.

16 BY MR. HORAN: Your Honor, I didn't go into
17 her knowledge of Mr. Flowers.

18 BY MR. LUMUMBA: I have no further questions.

19 BY THE COURT: Is she finally excused?

20 BY MR. LUMUMBA: Yes, sir.

21 BY THE COURT: Ms. Fleming, you are free to
22 go.

23 BY THE WITNESS: Thank you.

24 WITNESS EXCUSED.

25 BY THE COURT: Who will you have next?

26 BY MR. LUMUMBA: At this time, Judge, we are
27 going to call Mr. Roy Harris.

28 BY THE COURT: Okay. Can I approach? There
29 is a special problem with Mr. Harris.

1 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
2 THE JURY AS FOLLOWS:)

3 BY MR. LUMUMBA: I'm just going to make you
4 aware of this so you can, you know, interpret
5 objections or anything else based upon anything
6 like that. Harris has a serious hearing problem.
7 Okay. He can hear sometimes better than others
8 from what he has told me, and he hears some people
9 better than others. I think he will probably be
10 able to hear them quite well. I mean but, so I'm
11 going to ask that everybody here cooperate by
12 talking loud trying to make him hear you so he
13 won't be answering a question which he didn't, you
14 know--

15 BY THE COURT: --Okay, well, why don't you,
16 the first thing you do when you get him on the
17 stand is explain to him that if he doesn't hear a
18 question, to say that so that everybody can--

19 BY MR. LUMUMBA: Okay.

20 BY MR. HORAN: That is fine.

21 BY MR. LUMUMBA: I told him about the hearing.

22 END BENCH CONFERENCE.

23 (Witness enters the courtroom.)

24 BY THE COURT: Have you been sworn, sir?

25 BY THE WITNESS: (No response.)

26 BY THE COURT: Have you been sworn? Have you
27 raised your right hand?

28 BY THE WITNESS: (No response.)

29 BY THE COURT: Okay, let's do it again to make

1 sure.

2 **ROY HARRIS,**

3 a black male called to testify as a witness by the Defendant,
4 having first been duly sworn, testified as follows, to-wit:

5 **BY THE COURT:** For the jury's information, Mr.
6 Harris is a little hard of hearing. That's the
7 reason I am talking louder.

8 DIRECT EXAMINATION BY MR. LUMUMBA:

9 Q. Good afternoon, Mr. Harris. Good afternoon.

10 A. Right.

11 Q. Okay, Mr. Harris, if you don't hear me, make sure
12 you tell me; okay?

13 A. (Witness nods his head.)

14 Q. Did you hear what I said?

15 A. Uh-uh. You have got to come a little closer.

16 Q. All right.

17 **BY THE COURT:** I tell you what might be
18 better. Do you mind questioning him from the side?

19 BY MR. LUMUMBA: Yeah.

20 BY MR. LUMUMBA:

21 Q. Mr. Harris, can you turn this way. Okay, if you
22 don't hear me, make sure you tell me; okay?

23 A. (Witness nods his head.)

24 Q. Can you hear me now?

25 A. (Witness nods his head.)

26 **BY THE COURT:** Get him to answer out loud.

27 BY MR. LUMUMBA:

28 Q. You have got to talk loud too so they can hear you.
29 You have got to talk loud so the jury can hear you; okay?

1 A. All right, sir.

2 Q. Okay. Okay, now Mr. Harris, where do you live?

3 A. I stay at Kilmichael now, but I was staying at 902A
4 Silver, Silver, Bayou street or something in Winona.

5 Q. Do you know Clemmie Fleming?

6 A. Yes, sir. I do.

7 Q. I want to take you back to July of 1996.

8 A. (Witness nods his head.)

9 Q. Did you give Clemmie Fleming-- do you remember when
10 something happened at Tardy? Do you remember the day
11 something happened at Tardy Furniture?

12 A. Uh-huh.

13 Q. Okay. Can you tell me if you gave Clemmie a ride
14 that day?

15 A. The second time I went out.

16 Q. Okay, did you go out twice?

17 A. Right.

18 Q. Tell the ladies and gentlemen of the jury about
19 both trips. Tell them what happened.

20 A. The first time I went out?

21 Q. Both times. Go ahead and tell them.

22 A. The first time I left home I was going over to
23 Booger man's house to do some work on his garden tiller, and
24 he told me to be there about 9 o'clock. And I left home. I
25 went downtown. I crossed the railroad track, went down Front
26 Street to the first corner, to the left-- I mean the right.
27 I took it, went down to the post office, 3 way stop sign. I
28 took a left there. I went on down through there by the side
29 of that church going on into 407. This next road that is

1 coming, not the one behind the church, not the parking lot
2 behind the church and not the one that is coming from the
3 furniture store; it's the next street up the hill there to
4 the left. A fellow come out running, and he crossed the road
5 in the front of my car, and I like to have hit him. So he
6 got up on the street, and he kept running on up the street.
7 I put on brakes, and I started to run and pick him up, but my
8 mind told me no, said I didn't know him. I went on over the
9 hill to 407, went into 51, went by JJ Knox School and went
10 over to Booger man's house, but he wasn't there. I made the
11 block and come on back out, hit 51, going up through there by
12 Jeff's store going back toward Junior Food Mart. This same
13 fellow come down Silver Street running.

14 Q. Okay. Was Clemmie Fleming with you when you saw
15 this fellow?

16 A. No, sir. She wasn't with me then.

17 Q. Listen to me. What did that fellow look like?

18 A. He was about 5'6". He was light skinned. He wore
19 a bebop cap and a white T-shirt.

20 Q. Do you now know who Mr. Flowers is?

21 A. Did I know him?

22 Q. Did you know Mr. Curtis Flowers at the time?

23 A. No, sir. I didn't know him then, but I know him, I
24 know-- after they showed his picture, but my first time ever
25 seeing him.

26 Q. Who showed you a picture?

27 A. The District Attorney, Mr. John Johnson.

28 Q. Was the man in the picture they showed you the same
29 man you saw running?

1 A. No, sir. It wasn't.

2 Q. Did you tell him that?

3 A. Yes, sir.

4 Q. And by the way, how many pictures did he show you
5 when he showed you this picture?

6 A. One. The only one.

7 Q. Now you have already said that Clemmie was not with
8 you. What happened after you made this first trip? What
9 happened next?

10 A. I went back home. I was standing in my kitchen
11 window thinking about the fellow that I seen running, and I
12 said he must have been lost or something, or he didn't know
13 where he was going. And so about 50, 55 minutes, Clemmie
14 come over to my house and asked me to take her to the
15 furniture store to pay her furniture note. I went the same
16 direction I went when I first left the house. Before we got
17 to go over the hill down by the furniture store, she said,
18 "That's all right. Take me over to my mother's." As I got
19 to the 3 way stop in front of the church and the post office,
20 I said, "Clemmie." I said, "Let me show you where I like to
21 have done hit a fellow at this morning when he run across the
22 road in the front of my car." And after I showed her that, I
23 took her to her mother's house, and I went back home.

24 Q. Did you see any man running while Clemmie was with
25 you?

26 A. No, sir. Not period.

27 Q. Did she see any man running?

28 A. No, sir.

29 Q. Did you ever go in front of Tardy Furniture Store

1 that day?

2 A. No, sir.

3 Q. Did you ever stop in front of Tardy Furniture
4 Store?

5 A. No, sir.

6 Q. Did the, Mr. Johnson talk to you about this case?
7 Did he talk to you?

8 A. Well, yes, sir. He did. The first-- I went up
9 there at first and.

10 Q. When you say, when you say you went up there, up
11 where?

12 A. I went to the station.

13 Q. Okay.

14 A. Police station.

15 Q. This is after this incident?

16 A. After they caught--

17 Q. After the Tardy thing?

18 A. That's right.

19 Q. Okay, go ahead.

20 A. And I was giving him a statement about what I seen,
21 but he told me that he couldn't understand me, and I couldn't
22 understand him. So we got in the patrol car, and I carried
23 him around and showed him and the police where I seen the
24 fellow and everything like that. And he come back and he
25 said, well, say, "We will be in touch." And so after the
26 Defendant was caught, well, then he come back and got me to
27 come up there, and I went back to the station.

28 Q. This is after the Defendant was arrested?

29 A. But he asked me, said Clemmie Fleming, was she with

1 me at 10 o'clock. I told him yes, she was because I taken
2 her to the furniture store. And he said, "I want you to tell
3 me just exactly," say, "Clemmie Fleming done already told
4 me." Said, "I want you to tell me." And I say, well, I say,
5 "Clemmie Fleming wasn't with me when I first seen this guy
6 running." He said, "I don't want"-- he said the peoples,
7 the killing wasn't at 9, 5 to 9:00. He said it was at 10
8 o'clock. I said, "Well, I don't know nothing about that,"
9 but I say, "The main thing I just know what I seen." But he
10 wanted me to say what Clemmie had done said, but I know
11 Clemmie were wrong. And he kept on, kept on, and kept on and
12 the girl with me, she tried to get me to go ahead. I said,
13 well, I say, he hasn't-- she wasn't with me. And I didn't
14 want to tell that, you know. So I finally went on and agreed
15 with him just to get out of the police station where I could
16 go on back to the house.

17 Q. Now so you went ahead and agreed with him at that
18 time; is that correct?

19 A. That's right.

20 Q. Was it true that Clemmie was with you though? Was
21 it ever true that Clemmie was with you when you saw a man
22 running?

23 A. No, sir. She wasn't with me when I seen a man
24 running.

25 Q. Mr. Harris, were you subpoenaed here? Did you come
26 here today at first as a witness for the State? Did they
27 have you with their witnesses?

28 A. (Witness nods his head.)

29 Q. Did you come here as a witness for the State? Did

1 they have you with their witnesses?

2 A. That's right.

3 Q. I'm sorry?

4 A. That's right.

5 Q. Did they decide not to call you?

6 BY MR. HORAN: Your Honor, I object to that.

7 BY THE COURT: Sustained. You can't ask him
8 that.

9 BY MR. LUMUMBA:

10 Q. Now let me ask you this. Was there a hearing where
11 you said what Clemmie wanted you to say? A hearing?

12 A. Was there what now?

13 Q. A hearing. Do you remember a first hearing?

14 A. That's right.

15 BY MR. HORAN: Your Honor, I'm going to object
16 to this kind of stuff.

17 BY THE COURT: Right. Sustained.

18 BY MR. LUMUMBA: Okay, no problem.

19 BY MR. LUMUMBA:

20 Q. Okay, I'm going to -- can you see that man right
21 there? I'm going to ask you to stand up.

22 (The Defendant, Curtis Flowers, stands up.)

23 Q. Is this the man that you saw running on that day?

24 A. No, sir. It wasn't.

25 Q. Do you personally know this man?

26 A. I know him now.

27 Q. Okay. Did you know him, have you known him at any
28 time-- for how long have you -- do you personally know him?
29 Is he a friend of yours?

1 A. My first time of seeing him was at the first
2 hearing.

3 Q. Have you seen him--

4 BY MR. HORAN: Your Honor, I wish he would. I
5 tried not to object, but he is leading this
6 witness. I don't mind him speaking loudly so he
7 can hear him, but I don't want him to give him
8 leading questions.

9 BY THE COURT: Okay. Try not to lead him.

10 BY MR. LUMUMBA: Okay.

11 BY MR. LUMUMBA:

12 Q. When is the next time after the first hearing, when
13 is the next time that you saw that man?

14 A. Now.

15 Q. I didn't hear you. Could you say that?

16 A. Right now.

17 BY MR. LUMUMBA: I don't have any more
18 questions.

19 CROSS-EXAMINATION BY MR. HORAN:

20 Q. Mr. Harris, I want to ask you a few questions if I
21 may; okay?

22 BY THE COURT: Mr. Horan, I believe--

23 BY MR. HORAN: --I'm going to get over there.

24 BY THE COURT: And you are going to have to
25 kind of talk to him.

26 BY MR. HORAN: I am.

27 BY THE COURT: So he can see your lips.

28 BY MR. HORAN: I am.

29 BY MR. HORAN:

1 Q. Mr. Harris, do you remember giving Mr. Johnson a
2 statement regarding the Tardy Furniture murders? Do you
3 remember that? Do you remember giving Mr. Johnson a taped
4 statement? Do you remember giving Mr. Johnson a taped
5 statement? John Johnson, the fellow you talked about. Do
6 you remember giving him a statement?

7 A. A statement, uh.

8 Q. A statement; right.

9 A. About, that, uh.

10 Q. What you saw that morning. Do you remember giving
11 him a taped statement?

12 A. I remember giving him a statement about what I seen
13 when I was by myself.

14 Q. Do you remember him asking you to direct your
15 attention back to July the 16th of 1996? Do you remember
16 Mr. Johnson asking you to do that?

17 A. Yes, sir.

18 Q. All right. And you remember him asking you whether
19 or not you went down on Front Street? Do you remember him
20 asking you that question?

21 A. (No audible response.)

22 BY MR. LUMUMBA: Can I just get a page
23 reference?

24 BY MR. HORAN: First page.

25 BY MR. LUMUMBA: Okay.

26 **BY THE COURT:** He needs to answer out loud.

27 BY MR. HORAN:

28 Q. Answer out loud.

29 A. I remember him asking me that question, but I told

1 him that I went the same direction.

2 Q. Okay, do--

3 A. --I went--

4 BY MR. LUMUMBA: Let him explain.

5 BY MR. HORAN: Well, I want him to answer yes
6 or no first, and then he can explain.

7 BY THE COURT: Okay.

8 BY MR. HORAN:

9 Q. Do you remember Mr. Johnson asking you whether or
10 not you went down on First Street that morning?

11 BY MR. LUMUMBA: You mean Front Street.

12 BY MR. HORAN:

13 Q. I mean Front Street. Do you remember that?

14 A. What now?

15 Q. Do you remember Mr. Johnson asking you whether or
16 not-- and this is the question. Did you go downtown Front
17 Street? Do you remember him asking you that?

18 A. Yeah.

19 Q. And you said, "Yes, sir. I went downtown Front
20 Street." Do you remember, and that was your response. Do
21 you remember telling him that?

22 A. (Witness nods his head.)

23 BY THE COURT: Answer out.

24 BY MR. HORAN:

25 Q. Answer out.

26 A. Yes, sir.

27 Q. Okay. "What were you going downtown Front Street
28 for?" "Clemmie was going to pay her furniture note." Do you
29 remember telling Mr. Johnson that on a tape?

1 A. I remember telling Mr. Johnson that.

2 Q. And he said, "Clemmie Fleming was" question mark--
3 well, that was a question. Do you remember that? And you
4 said, "That's right." "And you were giving her a ride?" Do
5 you remember that? Do you remember telling Mr. Johnson those
6 things?

7 A. Remember what now?

8 Q. That you were giving her a ride, Clemmie a ride.
9 Do you remember telling Mr. Johnson that?

10 A. A--

11 Q. A ride in your automobile. You gave Clemmie a ride
12 that day?

13 A. Talking about a ride?

14 Q. Right. Okay.

15 A. I was taking her to the furniture store.

16 Q. Right, right. You gave her a ride down there, and
17 you said, "That's right." And he asked you about the
18 direction that you went. Do you remember that?

19 A. Right.

20 Q. And you said that you went downtown in front of
21 Tardy Furniture. Do you remember telling Mr. Johnson that?

22 A. No, sir.

23 Q. You don't remember telling him that?

24 A. No, sir.

25 Q. You deny making that statement?

26 A. I deny making that statement. I told Mr. Johnson I
27 went the same direction I went when I first left home.

28 Q. Now do you remember Mr. Johnson asking you this
29 question. Page 3. "Well, over there on Church Street was

1 anybody mentioned, anybody called, something about somebody
2 called, anybody called somebody's name?" Do you remember Mr.
3 Johnson asking you that question?

4 A. Yes, sir. I remember him asking me that question.

5 Q. Do you remember that your response was, "She said
6 something about 'There goes Curtis Flowers.' I didn't pay
7 her no attention." Do you remember telling Mr. John Johnson
8 that when he interviewed you? Do you remember telling him
9 that?

10 A. Yes, sir. That's what Clemmie Fleming said.

11 Q. That's what Clemmie Fleming said?

12 A. The words she said.

13 Q. No, sir. Do you remember-- just answer my
14 question. Do you remember telling him that, "She said
15 something about 'There goes Curtis Flowers.' I didn't pay
16 her no attention." Do you remember--

17 A. --that's what--

18 Q. --telling Mr. Johnson that?

19 A. That's what he was, wanted me to go by what she
20 said.

21 Q. Okay. Later on in the statement do you remember
22 Mr. Johnson asking you this question. "Did you hear her say
23 Curtis Flowers' name that morning, July the 16th, as you were
24 giving her a ride down Church Street?" Do you remember that
25 particular question?

26 A. Yes, sir. That was a question.

27 Q. Do you remember that your response was, "That is
28 right"? And when they said, "I'm talking about when they
29 showed me the picture on TV and they got asking people who

1 was Curtis Flowers. Who was Curtis Flowers, and they were
2 telling about it. I said to myself; I told them, Seems like
3 I heard that name before. And they said, It's Archie
4 Flowers' son." Do you remember telling Mr. Flowers-- I mean
5 Mr. Johnson that? Do you remember that?

6 A. I remember telling Mr. Johnson that I might have
7 heard Clemmie Fleming saying something like that. But how is
8 Clemmie Fleming going to say anything like that when she
9 wasn't with me, and I ain't seen nothing.

10 Q. Okay, Mr. Harris, but that is not my question. My
11 question is that when Mr. Johnson interviewed you back in
12 19-- early 1997, I believe, regarding this incident, that's
13 what you told him, wasn't it, Mr. Harris?

14 A. Yes, sir. That's what I told him, but the first
15 statement I give Mr. Johnson was the right statement. That's
16 the statement Clemmie Fleming give Mr. Johnson.

17 Q. Yes, sir, but--

18 A. --Mr. Johnson wanted me to go behind her, but I
19 wouldn't do it. And I kept telling him that she wasn't with
20 me when I seen the fellow running.

21 Q. Okay. Now Mr. Harris, Mr. Lumumba asked you about
22 another time that you talked about this. And you were under
23 oath at that time, weren't you, when you made another
24 statement regarding whether or not Mr.-- whether or not
25 Clemmie Fleming had identified Curtis Flowers. You were
26 under oath with reference to that particular statement, were
27 you not? You took an oath. Do you remember that?

28 A. (No immediate response.)

29 Q. The second time you told anybody or made any

1 statement or testified about whether or not you saw Curtis--
2 I mean whether or not Clemmie Fleming saw Curtis Flowers, you
3 were under oath, weren't you?

4 A. (No response.)

5 Q. Have you ever been sworn and then testified about
6 this matter?

7 A. On the last hearing?

8 Q. Yes, sir. You were under oath, were you not?

9 A. Come again.

10 Q. Did you raise your right hand and swear to tell the
11 truth?

12 A. I did.

13 Q. Okay.

14 A. Come again.

15 Q. Okay. I am trying. I have got a sore throat, and
16 this is really tough on me. And the question, page 766, now
17 I asked you; do you remember me asking you some questions?
18 Do you remember that?

19 A. (No audible response.)

20 Q. "Did Ms. Fleming identify the man running as Curtis
21 Flowers to you?" "That's what she, that's what I remember
22 her saying." Do you admit or deny that you made that
23 statement while under oath?

24 A. I said I remember, I think I remember her saying
25 something like that. I didn't say she said it.

26 Q. You remember her saying--

27 A. --I think. I think I remember her saying something
28 like that.

29 Q. Okay. That's what, "That's what I remember her

1 saying."

2 A. Right.

3 Q. And then page 767, "And this is the day of the
4 murders" -- that's what I asked you -- "that morning on
5 Church Street, two blocks from behind Tardy's, she identified
6 Curtis Flowers to you, didn't she?" Your response was--
7 what did you say? "That's right." Do you remember making
8 that statement?

9 A. No, sir. I don't. Sho' don't.

10 Q. But you were under oath when you gave that
11 testimony. You were under oath; you swore to God to tell the
12 truth when you made these statements at the prior hearing,
13 did you not? You were under oath?

14 A. When I was telling Mr. Johnson that?

15 Q. No, sir. When you testified about this matter
16 before, you were under oath?

17 A. (No response.)

18 Q. You swore. You swore to tell the truth?

19 A. Not as I know, sir.

20 Q. Okay. Okay. And I asked you another question
21 about the route that you took. Do you remember me asking you
22 a question about the direction that you took that particular
23 day? Do you remember me asking you that?

24 A. Yes.

25 Q. You may not. Do you?

26 A. Right.

27 Q. All right. And I asked you with reference to what
28 you told Mr. Johnson--

29 BY MR. LUMUMBA: --Excuse me. Are we still on

1 page--

2 BY MR. HORAN: --I'm sorry. 767, that's
3 right.

4 BY MR. HORAN:

5 Q. I asked you, I said, "Do you remember telling Mr.
6 Johnson that 'I went downtown Front Street.' Do you remember
7 telling Mr. Johnson that?" Your response was, "That's
8 right." Now at this hearing-- I want you to listen to my
9 question. Okay, I will let you explain. Do you remember
10 making that statement?

11 A. I remember telling Mr. Johnson I went downtown
12 Front Street in the-- but I said I didn't know what y'all
13 call Front Street. But I say what I call Front Street is
14 coming down Front Street, but I didn't go over the hill down
15 by the furniture store. I took a right on the corner by the
16 bank.

17 Q. Okay, but at your prior testimony you testified
18 that you had told Mr. Johnson that you went down Front
19 Street; right?

20 BY MR. LUMUMBA: Judge. That is not--

21 BY THE WITNESS:

22 A. --I call Front Street--

23 BY MR. LUMUMBA: --I object. I don't--

24 BY MR. HORAN: --Okay, I will move on. I will
25 move on.

26 BY MR. LUMUMBA: Okay, that is not a
27 contradiction.

28 BY MR. HORAN:

29 Q. My point is that you didn't testify to anything

1 different than you went down Front Street when you were with
2 Clemmie Fleming, did you? When you were with Clemmie, you
3 went down Front Street, didn't you?

4 A. Right. That's the direction I went when I left
5 home.

6 Q. Okay. All right. And then, page 768, I asked you,
7 "And then you went down and hit Church Street? You went
8 down and hit Church Street?" "Right, when--" and I asked you
9 this question. "And that's when you saw the individual that
10 she identified as Curtis Flowers?" And you said, "And took a
11 left, and took a left there." That was your response. Do
12 you remember making that statement while under oath, Mr.
13 Harris?

14 A. No, sir. Sho' don't.

15 Q. Okay. Let me get back up here. Mr. Harris?

16 A. Yes, sir.

17 Q. You have never testified under oath before that
18 Clemmie Fleming tried to get you to testify to anything, have
19 you? You have never testified under oath to that particular
20 fact, have you?

21 A. That Clemmie Fleming tried to do what?

22 Q. Tried to get you to back up her story. You have
23 never testified under oath to that before, have you, Mr.
24 Harris?

25 A. That Clemmie Fleming, I tried to get her to back up
26 her story or she tried to--

27 Q. --that Clemmie tried to get you to back up her
28 story? You have never testified to that under oath before,
29 have you?

1 A. (Witness shakes his head.)

2 Q. Okay. And you have never testified under oath
3 before that Mr. Johnson tried to get you to do anything that
4 you didn't want to do. You have never testified under oath
5 to that before, have you?

6 A. That Mr. Johnson tried to get me to say that I
7 didn't want to do.

8 Q. Yes. You have never testified to that under oath
9 before, have you?

10 A. No, sir. Sure haven't.

11 Q. In all the questions that you responded to while
12 you were under oath last time, you never mentioned that, did
13 you, Mr. Harris?

14 A. In the last hearing?

15 Q. Yes, sir. You never mentioned that Mr. Johnson did
16 anything wrong to you at the last hearing, did you, Mr.
17 Harris?

18 A. I know that too.

19 Q. Nor Clemmie Fleming. Nor Clemmie Fleming. You
20 never testified that Clemmie Fleming did anything wrong to
21 you or tried to get you to do anything wrong. You have never
22 testified to that under oath, have you, Mr. Harris?

23 A. I don't understand. I don't understand what you
24 are talking about.

25 Q. What I'm asking you is you have never testified
26 under oath that Clemmie Fleming tried to get you to do
27 anything wrong. You never testified under oath to that
28 before, what you are testifying to here today, have you, Mr.
29 Harris?

1 A. That Clemmie Fleming never tried to get me to do
2 nothing wrong?

3 Q. Right. You have never testified to that under
4 oath, that she tried to get you to do anything wrong. Have
5 you ever testified to what you are testifying to here today
6 with reference to Clemmie Fleming making up what she
7 testified to? Have you done that before under oath?

8 A. What I'm testifying today--

9 Q. --I understand what you are testifying to today.

10 BY MR. LUMUMBA: --Let him finish. Let him
11 finish, Judge.

12 BY THE WITNESS:

13 A. --that she haven't seen nobody running. I was the
14 onliest one seen the man running.

15 Q. That's exactly -- okay, go ahead.

16 A. And that's it.

17 Q. Okay.

18 A. That's all I know.

19 Q. My question is that you have never testified to
20 that before today under oath, have you?

21 A. Not as I can recall.

22 Q. Okay. Now the same man that was running down there
23 behind Tardy Furniture was the same man that you saw up on
24 51, isn't it? The same man that you said you saw running
25 behind Tardy Furniture is the same man that was running up on
26 highway or close to Highway 51?

27 A. The same man I seen running across in front of my
28 car on the upper street was the same fellow that was coming
29 down Silver Street.

1 Q. So you saw him-- you were in your vehicle that
2 morning, and you saw the same man on two separate occasions;
3 right?

4 A. Right.

5 Q. Okay. And do you remember telling, telling Mr.
6 Johnson the first time you talked to him you stated like we
7 were going to, down to the furniture place, but she told me
8 to turn right. Do you remember telling Mr. Johnson that?

9 A. (Witness shakes his head.) No, sir.

10 Q. Okay. Mr. Harris, on two prior occasions prior to
11 today you have given-- okay, I'm sorry. I thought I was loud
12 enough. On two prior occasions prior to what you testified
13 here today, on two occasions you have once made a statement
14 and secondly testified under oath that the man that was
15 running behind Tardy Furniture, Clemmie Fleming identified as
16 Curtis Flowers, haven't you? You have done that twice,
17 haven't you, Mr. Harris?

18 A. I testified that the man-- I didn't say running
19 behind the furniture store. He was running across from the
20 street up there.

21 Q. Well, on Church?

22 A. On Church Street, right across--

23 Q. --which is behind the furniture store. That is
24 behind the furniture store?

25 A. That's behind the furniture store.

26 Q. I want you to be real careful, Mr. Harris. I want
27 you to make sure you understand what I'm telling you. You
28 have testified under oath previously that Clemmie Fleming
29 identified that person as Curtis Flowers, haven't you? You

1 testified to that at a prior hearing?

2 A. Yes, sir. I did. But the reason I testified
3 against that partly because I know she was wrong, and that
4 was what Mr. Johnson wanted me to say. She told that there.
5 Mr. Johnson didn't want the statement that I give him at
6 first about the man was running. And then after they caught
7 the Defendant, Clemmie went up there and talked to Mr.
8 Johnson, and she made, messed everything up, and Mr. Johnson
9 wanting me to agree with Clemmie.

10 Q. But my question is--

11 A. --which I kept telling Mr. Johnson that Clemmie
12 Fleming was not with me when I seen the man running.

13 Q. But you did not testify to that under oath at the
14 prior hearing, did you? You testified that she was with you,
15 didn't you?

16 A. No, sir. She wasn't with me.

17 Q. But you testified to that, didn't you?

18 A. I just told you a reason I did testify against him.

19 Q. Okay.

20 (State's Counsel confer briefly.)

21 Q. You showed Mr. Johnson the route that you took that
22 particular day, didn't you? You got in the automobile with
23 Mr. Johnson, didn't you?

24 A. Right.

25 Q. And y'all, y'all went the route. You showed him
26 the route?

27 A. I showed him the route.

28 Q. You would agree with me, Mr. Harris, wouldn't you,
29 that your recollection of what Clemmie told you on that day

1 being July the 16th, 1996, would be better a year ago or two
2 years ago than it would be today, wouldn't it? I will
3 withdraw. I will withdraw.

4 BY MR. HORAN: Nothing further.

5 BY THE COURT: Redirect.

6 REDIRECT EXAMINATION BY MR. LUMUMBA:

7 Q. Mr. Harris?

8 A. Yes, sir.

9 Q. You have indicated that you saw -- how many times
10 did you see that man running?

11 A. Twice.

12 Q. You said that you talked to Clemmie Fleming;
13 right? You told Clemmie Fleming what you saw?

14 A. Right.

15 Q. How many times did you tell her you saw that man
16 running?

17 A. Twice.

18 Q. Okay. Did you tell her where you saw the man
19 running at?

20 A. Yes, sir. I carried her and showed her.

21 Q. Now let me ask you this. Have you ever told Mr.
22 Johnson that you pulled up and passed Tardy Furniture or
23 stopped in front of Tardy Furniture on that day? Have you
24 ever told Mr. Johnson that?

25 A. No, sir. I never told him that.

26 Q. But you did tell him that you were on Front Street;
27 right?

28 A. I did tell him I was on Front Street.

29 Q. Does, is Front Street only in front of Tardy

1 Furniture?

2 A. What?

3 Q. Where is Front Street at? Where is Front Street?

4 A. It's down by the, used to be the Amtrak, down by
5 the old depot.

6 Q. Is Tardy Furniture right there?

7 A. No, sir. It's over the hill, down the hill from
8 the depot.

9 Q. Did you, were you ever in a car with Clemmie
10 Fleming when you saw somebody running on that day?

11 A. No, sir. I wasn't in the car with Clemmie Fleming
12 when I seen nobody running that day.

13 Q. Have you ever -- are you being offered anything for
14 your testimony here today?

15 BY MR. HORAN: I didn't go into that.

16 BY THE WITNESS:

17 A. No, sir.

18 BY THE COURT: No, he didn't.

19 BY MR. LUMUMBA: Okay. I don't have any
20 further questions of this witness.

21 BY THE COURT: Is he finally excused?

22 BY MR. LUMUMBA: Yes, sir.

23 BY THE COURT: You are free to go. You can go
24 home.

25 WITNESS EXCUSED.

26 BY THE COURT: Unlike the rest of us. Who do
27 you have next?

28 BY MR. LUMUMBA: The Defense would call Robert
29 Campbell.

1 **BY THE COURT:** Robert Campbell.

2 BY MR. LUMUMBA: I am still talking loud.

3 **BY THE COURT:** Me too.

4 (Witness enters courtroom.)

5 **BY THE COURT:** Have you been sworn?

6 BY THE WITNESS: No, sir.

7 **BY THE COURT:** Would you raise your right
8 hand.

9 **ROBERT CAMPBELL,**

10 a black male called to testify as a witness by the Defendant,
11 having first been duly sworn, testified as follows, to-wit:

12 **BY THE COURT:** Mr. Campbell, have a seat right
13 there, please. State your name for the record.

14 BY THE WITNESS: My name is Robert Campbell.

15 DIRECT EXAMINATION BY MR. LUMUMBA:

16 Q. Mr. Campbell, could you tell the ladies and
17 gentlemen of this jury, please, where you live?

18 A. I live in St. Rose, Louisiana.

19 Q. And Mr. Campbell do you work? Are you employed?

20 A. I work.

21 Q. Okay?

22 BY MR. HORAN: Your Honor, can we approach?

23 **BY THE COURT:** Uh-hum.

24 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
25 THE JURY AS FOLLOWS:)

26 BY MR. HORAN: He has already attempted to
27 impeach regarding the weapon. I assume that's what
28 you are doing?

29 **BY THE COURT:** What?

1 BY MR. HORAN: He is putting this witness on
2 to attempt to impeach Doyle Simpson, and Mr.
3 Simpson admits he made a misrepresentation about
4 the gun. This is cumulative. This has no
5 additional value. I'm going to object to it.

6 BY THE COURT: It is cumulative. He has
7 admitted it. It's in evidence. He hasn't denied
8 making it.

9 BY MR. HORAN: He hasn't denied making the
10 statement.

11 BY THE COURT: I mean denied, he has not
12 denied the fact that you are trying to prove. He
13 is admitting it, so it is before the jury now.

14 BY MR. LUMUMBA: Yeah, okay. I have a couple
15 of other questions.

16 BY THE COURT: Okay.

17 BY MR. HORAN: Well, I have not been-- any
18 other statements have not been discovered other
19 than that.

20 BY MR. LUMUMBA: All he is just going to do is
21 testify. I think what his testimony is just like
22 the Defendant testified.

23 BY MR. HORAN: The Defendant?

24 BY MR. LUMUMBA: The Defendant at the last
25 trial, plus you have his statement that this, that
26 he had a big family thing, you know, on the 4th of
27 July.

28 BY MR. HORAN: Oh, okay.

29 BY MR. LUMUMBA: This gentleman was here, and

1 he is basically just going to testify that a bunch
2 of them there, he hung out with the Defendant for
3 the week or two after that and that they, you know,
4 basically testify to circumstances as to what
5 occurred on that week. I mean it's not-- and also
6 he is going to testify to the fact that he has a
7 weapon. Other people in the family have weapons
8 and shoot weapons all the time.

9 BY MR. EVANS: None of that has been furnished
10 on discovery.

11 BY THE COURT: Do y'all want to go through the
12 Box procedure?

13 BY MR. HORAN: Your Honor, I can make a
14 suggestion. I don't mind doing it. Of course, the
15 State is under a little bit different burden than
16 the Defendant when it comes to Box; I understand
17 that. But if we have an opportunity to interview
18 him, and I'm not going to ask the Court to disallow
19 his testimony, but I would like to have an
20 opportunity for one of my investigators to
21 interview him regarding those statements.

22 BY THE COURT: I think they are entitled under
23 Box to talk to him.

24 BY MR. HORAN: Are you going to put him--

25 BY MR. LUMUMBA: --Wait, Wait. Well, let me
26 just say this. I don't have another witness here.
27 We unfortunately let all our witnesses go until
28 Monday, but the other thing--

29 BY THE COURT: --Let me ask you this just as a

1 point of reference. How many do you think you have
2 Monday?

3 BY MR. LUMUMBA: I can't--

4 BY THE COURT: -- I'm not going to tie you
5 down to it.

6 BY MR. LUMUMBA: How many more witnesses?

7 BY THE COURT: Yeah.

8 BY MR. LUMUMBA: About seven.

9 BY THE COURT: Okay. About the same length as
10 what we having have been doing?

11 BY MR. LUMUMBA: Yeah.

12 BY THE COURT: That is okay. It doesn't
13 matter.

14 BY MR. LUMUMBA: Yeah, seven. It will be
15 done. I don't think they are going to be long. I
16 don't think they are going to be long.

17 BY THE COURT: Okay. Well, how long is this
18 one? This witness won't be long.

19 BY MR. LUMUMBA: No.

20 BY THE COURT: Why don't we take about--

21 BY MR. HORAN: --Your Honor, I tell you what
22 we could do. I don't mind-- of course, this may be
23 improper. Do his direct examination but we could
24 interview him after--

25 BY THE COURT: --No, we are not-- if we are
26 going to do it, we are going to do it the way Box
27 says do it.

28 BY MR. LUMUMBA: Here is the only--

29 BY MR. EVANS: --If the only thing you are

1 going to ask him is about the size of the family,
2 whether he was up here for the Fourth of July--

3 BY MR. LUMUMBA: He was really here up until
4 really right before this thing happened. He left
5 maybe a day-- he was there until the weekend before
6 this thing happened.

7 BY MR. HORAN: Is he going to testify they
8 were firing weapons and stuff?

9 BY MR. LUMUMBA: Yeah, he is going, yeah.
10 They were firing-- not the client, not the
11 Defendant, but he was firing weapons, and other
12 people--

13 BY MR. EVANS: --This is the first time this
14 has ever come up.

15 BY MR. LUMUMBA: Well, I mean I wasn't the
16 lawyer in the last trial, but I mean I just, this
17 guy lives out of town. I just really had a chance
18 to talk to him--

19 BY MR. HORAN: --Put him on in the morning,
20 Judge.

21 BY MR. EVANS: --yeah, we are going--

22 BY THE COURT: --Monday.

23 BY MR. LUMUMBA: Can't put him on in the
24 morning.

25 BY MR. HORAN: I mean Monday.

26 BY THE COURT: Yeah, y'all can put on whoever
27 you want to in the morning. I just won't be here
28 with you.

29 BY MR. LUMUMBA: Okay, I don't have a problem

1 with that. He lives in Metairie. I guess he is
2 closer to here than we are.

3 **BY THE COURT:** Yeah, well, he is. That's
4 true. Okay, let me put the jury to bed, and that's
5 the last witness you have got.

6 **BY MR. HORAN:** Have you got a tape on him?

7 **BY MR. LUMUMBA:** No.

8 **END BENCH CONFERENCE.**

9 **BY THE COURT:** Ladies and gentlemen, Mr.
10 Campbell will be the last witness that the Defense
11 has here today because there are some reasons why
12 some folks could not be here until Monday and some
13 reason that they didn't know that they were going
14 to be in a position to have to put on some of their
15 evidence today. So we are going to-- we are
16 certainly going to go into Monday, and Mr. Campbell
17 needs to talk to the lawyers here later today
18 before he can finish testifying. So I'm going to,
19 we are going to quit now at 4:30, and I'm going to
20 let you go for the weekend.

21 I give you the same instructions that I have
22 given you before, and I understand from the
23 bailiffs they have made arrangements for y'all to
24 be able to do within the confines of what we are
25 doing as much as you want to do tomorrow and
26 tonight and all like that. And they will take care
27 of you. If they need to get hold of me, if you
28 have got any special needs or anything like that,
29 they will talk to me, and I will see that you get

1 taken care of. But I'm going to let you go now for
2 the weekend, and we will start promptly at 9
3 o'clock on Monday. And I hope y'all have a
4 reasonably good weekend. Hope the weather is
5 nice.

6 JURY LEAVES THE COURTROOM.

7 **BY THE COURT:** Is there any reason that Mr.
8 Campbell can't be interviewed this afternoon?

9 BY MR. EVANS: No, sir.

10 **BY THE COURT:** Okay, let's do that. Mr.
11 Campbell, do you understand that? They want you to
12 stick around until they can talk to you.

13 BY MR. LUMUMBA: Can I explain to him what is
14 supposed to be happening?

15 **BY THE COURT:** Sure or I will; it doesn't
16 matter.

17 BY MR. LUMUMBA: Yeah, you go ahead.

18 **BY THE COURT:** Okay. Under this procedure,
19 there are some things that they knew about in the
20 context of what you were going to say, and some of
21 them they did not. They are entitled to know those
22 things that they did not before you testify. And
23 they have to make some choices, but I think they
24 just want to know what you are going to say, and
25 that's all they want to talk to you about.

26 Okay. Court is adjourned until 9 o'clock--

27 BY MR. LUMUMBA: --Let me ask you this
28 question because this is always an issue whenever
29 we do this. Is there a problem with us being

1 present while he is being interviewed without
2 saying anything?

3 BY MR. HORAN: That is up to the witness.

4 BY MR. LUMUMBA: That is up to the witness. I
5 guess I should ask the witness. Do you have a
6 problem with somebody--

7 BY THE WITNESS: --No, I don't have a problem.

8 BY MR. LUMUMBA: Okay.

9 BY THE COURT: I have got a problem--

10 BY MR. EVANS: --The question is not whether
11 he has a problem with it. We are asking to
12 interview this witness and unless--

13 BY THE COURT: --I think under Box, it says
14 you have got a right to interview him, and the
15 intention of Box is that that be done under
16 whatever circumstances you have got to have; just
17 like I would do the same thing for you. I wouldn't
18 let them sit in on yours.

19 BY MR. LUMUMBA: So what is your problem?

20 BY MR. EVANS: We want to talk to him by
21 hisself.

22 BY MR. LUMUMBA: Oh, okay.

23 BY MR. EVANS: We don't want anybody to try to
24 influence him.

25 BY THE COURT: See y'all Monday.

26 (Mr. Lumumba and Mr. Evans confer further off
27 the record.)

28 COURT RECESSED FOR THE DAY AT 4:35 P.M. ON MARCH
29 27, 1999.

1 TRIAL CONTINUED ON MONDAY, MARCH 29, 1999, AT
2 9:00 A.M. WITH THE COURT, ALL COUNSEL, AND THE DEFENDANT
3 PRESENT IN OPEN COURT:

4 BY MR. LUMUMBA: Good morning, Judge. Can I
5 check on my witnesses?

6 BY THE COURT: Yes, sir.

7 BY MR. LUMUMBA: The witness went to the rest
8 room.

9 BY THE COURT: Is he going to come on in
10 here?

11 (Off the record briefly.)

12 BY THE COURT: Who are we waiting on?

13 BY MR. LUMUMBA: He is not here, I don't
14 believe. I would call Mr. Campbell, but he is not
15 here right now. But there is, Mr. McSparrin is
16 here. He is the person that went to the rest
17 room. Let me make sure he is not waiting out--

18 BY THE COURT: All right.

19 (Mr. Robert Campbell, the last witness on
20 Saturday, enters the courtroom.)

21 BY MR. LUMUMBA: He will go first.

22 BY THE COURT: You can have a seat up here.

23 ROBERT CAMPBELL,

24 a black male called as a witness by the Defendant who began
25 his testimony on March 27, 1999, and having been previously
26 sworn, testified further as follows, to-wit:

27 BY THE COURT: Mr. Campbell, identify yourself
28 to this lady again.

29 BY THE WITNESS: My name is Robert Campbell.

1 **BY THE COURT:** And you were the one that was
2 in the process of testifying on Saturday when we
3 quit; is that right?

4 **BY THE COURT:** Yes, sir.

5 JURY ENTERS THE COURTROOM.

6 **BY THE COURT:** Good morning.

7 BY THE JURY: Good morning.

8 **BY THE COURT:** Mr. Lumumba, you may proceed.

9 BY MR. LUMUMBA: Thank you. Good morning,
10 ladies and gentlemen of the jury.

11 BY THE JURY: Good morning.

12 DIRECT EXAMINATION BY MR. LUMUMBA:

13 Q. Good morning, Mr. Campbell.

14 A. Good morning.

15 Q. Could you say again for the ladies and gentlemen of
16 the jury what your name is, please?

17 A. My name is Robert Campbell.

18 Q. And Mr. Campbell, where is it that you reside?

19 A. St. Rose, Louisiana.

20 Q. And how long have you lived in that area?

21 A. For 22 years.

22 Q. Do you have-- are you employed?

23 A. Yes.

24 Q. What is it that you do?

25 A. Well, we build big industrial machines and conveyor
26 belts.

27 Q. Okay. I would like to take your attention to
28 Winona. Do you know anybody in Winona?

29 A. Yes, my mother live there.

1 Q. Okay, and do you have other family in Winona?

2 A. Yes. A lot of nieces and nephews and sisters and
3 brothers.

4 Q. Do you know a person by the name of Curtis Flowers?

5 A. Yes.

6 Q. How long have you known Mr. Flowers?

7 A. All his life.

8 Q. Okay. Are you related to him in some sort of way?

9 A. My nephew.

10 Q. Okay, he is your nephew. Okay. Did you see Mr.
11 Flowers at all during the weeks prior to July the 16th, 199--
12 well, let me just put it this way. The 4th of July of 1996,
13 did you have an occasion to see Mr. Flowers at all?

14 A. Yes, sir.

15 Q. And where was it you saw him at?

16 A. Downtown Winona.

17 Q. Okay. And did you see him after the 4th of July
18 anywhere? Did you have any kind of-- did you see any other
19 family on that day also?

20 A. Yes.

21 Q. Where did you see them at?

22 A. We was downtown buying fish.

23 Q. Okay, and what were you buying the fish for?

24 A. For the Fourth of July. We all get together on the
25 Fourth.

26 Q. Did you have a get together on the Fourth?

27 A. Yes, sir. We did.

28 Q. Okay. Now did you, after the 4th, did you go
29 back-- how long did you stay in Winona?

1 A. I was there for two weeks. I was on vacation.

2 Q. And did you see Mr. Flowers during that period of
3 time?

4 A. Yeah, he was with all that, the whole time I was
5 there.

6 Q. Okay. Now I would like to call your attention to
7 the-- what date did you leave? I guess that's the question
8 I really have. What date did you really leave Winona?

9 A. Well, I left that weekend before the incident.

10 Q. Okay, when you say the incident, are you talking
11 about the incident at Tardy's store?

12 A. Yes, sir.

13 Q. Okay, and say now you left the weekend before the
14 Tardy incident. Now let me ask you this. Did you do
15 anything with any of your nephews or your relatives on that
16 weekend?

17 A. Yeah, every time I come to town we mostly go to
18 shoot.

19 Q. Okay, and where do you shoot at?

20 A. Up by my sister's house. She live out of the city
21 limits. We normally walk in the woods and shoot.

22 Q. Okay. And does anyone in your family have any
23 weapons?

24 A. All, all my nephews and them because they like to
25 hunt with me.

26 Q. Okay, what kind of weapons do they have are you
27 talking about?

28 A. .22, .410, 12 gauge and .30/30.

29 Q. Okay, and do you guys hunt with those guns?

1 A. Yes, sir.

2 Q. And are those guns always clean and kept clean?

3 A. No, they are not.

4 Q. Okay. Now let me ask you this. Did you on the
5 weekend that you did the shooting, who was with you when you
6 actually did the shooting?

7 A. My little nephew Chris, he was with me. When we
8 came, we came out of the woods, Curtis caught up with us. He
9 came but he came late. He didn't get to shoot because we had
10 got a shell stuck in the .22.

11 Q. And did Curtis have any contact with anything?

12 A. Yeah, he tried to get the shell out of the .22. We
13 had to dig the .22 cartridges out with a screwdriver.

14 Q. Okay. Name some of the relatives in your family
15 that have the shotguns and other weapons.

16 A. Well, Will have a .22. Chris have a .22. Archie
17 got a 20 gauge.

18 Q. Archie who?

19 A. Archie Flowers.

20 Q. And who is that? Is he related to Mr. Flowers in
21 any way?

22 A. Yeah, that's his daddy.

23 Q. Does Mr. Flowers ever visit his dad to your
24 knowledge?

25 A. Every day.

26 Q. Okay. Now let me ask you this question if you
27 know. Are you fairly familiar with Winona?

28 A. Yes, sir.

29 Q. Okay. And you are familiar with where Tardy's

1 store is?

2 A. Yes, sir.

3 Q. Okay. Are you familiar with Coast to Coast?

4 A. Yeah, it's in the next building.

5 Q. It's in the next building?

6 A. Yeah.

7 Q. Okay. Is there some kind of Coast to Coast
8 facility behind Tardy?

9 A. Yeah, where they work on lawnmowers, all kind of
10 little small equipment there -- washing machines and stuff
11 like that, yeah.

12 Q. Okay.

13 (Defendant's Counsel confer briefly.)

14 Q. Now did you ever receive a call -- do you know a
15 person by the name of Doyle Simpson?

16 A. Yeah, he is my half brother.

17 BY MR. EVANS: Your Honor, I think we covered
18 this issue yesterday. May we approach?

19 BY THE COURT: Uh-hum. You may.

20 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
21 THE JURY AS FOLLOWS:)

22 BY MR. EVANS: We object to him going into any
23 calls from Doyle Simpson because he did not impeach
24 Doyle on it. Doyle admitted that he called him and
25 asked him to lie about the gun. This is not
26 relevant.

27 BY MR. LUMUMBA: Well, it's relevant to
28 corroborate that what Doyle admitted to was true,
29 that he did call him and ask him. This is the man

1 that Doyle called.

2 **BY THE COURT:** It's a consistent statement
3 though. It's not relevant unless it's
4 inconsistent.

5 **BY MR. LUMUMBA:** Okay, well, I'm not going to
6 elicit the statement. I'm just going to elicit the
7 fact that he got a call.

8 **BY MR. EVANS:** Which again is not relevant.

9 **BY MR. LUMUMBA:** I'm going to ask him-- well,
10 excuse me. I'm going to ask him if Doyle is his
11 brother, and did he get a call from Doyle.

12 **BY THE COURT:** I will let you ask that
13 question, but you can't go into the statement of
14 what he made.

15 **BY MR. LUMUMBA:** Okay.

16 END BENCH CONFERENCE

17 **BY MR. LUMUMBA:**

18 Q. Mr. Campbell, my question is going to be just
19 simple. Are you related to Doyle Simpson in any kind of way?

20 A. Yes, he is my half brother.

21 Q. And did you receive a call from him?

22 A. Yes, I did.

23 Q. Okay, I have been ruled not to go into what he
24 said, so I'm not asking you what he said. But after you got
25 the call from him, did you do anything that he may have asked
26 you to do?

27 **BY MR. EVANS:** Your Honor.

28 **BY THE WITNESS:**

29 A. No, I didn't.

1 **BY THE COURT:** --Wait a minute. Wait a
2 minute.

3 BY MR. EVANS: I object. May we approach
4 again?

5 **BY THE COURT:** Okay.

6 BY MR. EVANS: We had just covered this area,
7 Your Honor, and Opposing Counsel will not follow
8 the Court's instructions.

9 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
10 THE JURY AS FOLLOWS:)

11 BY MR. LUMUMBA: I think I am following the
12 Court's instructions. I'm not trying to get the
13 statement out. I'm trying to see what he did. Let
14 me the tell you why I think it is relevant to my
15 case. The reason I think it's relevant to my case,
16 their statement is going to be is that he is biased
17 toward Curtis because he is his relative, okay. I
18 am trying to bring out the fact that this is the
19 man who talked to Doyle and then refused to do what
20 Doyle asked him to do, okay. I'm not going to
21 bring out what he asked him to do. Doyle has
22 already admitted what he asked him. That shows
23 that he is not going to just lie for a relative.

24 **BY THE COURT:** Okay, you can ask-- I think
25 you have already -- let's see. I don't know how to
26 say it. You have already asked him did he ask you
27 to do something. You can ask him, did you do it.

28 BY MR. LUMUMBA: Okay, that's all I wanted to
29 do.

1 **BY THE COURT:** That's it.

2 END BENCH CONFERENCE

3 BY MR. LUMUMBA:

4 Q. Yes, my question to you at this time, Mr. Campbell,
5 is did you do what Mr. Doyle Simpson asked you to do?

6 A. No, I didn't.

7 Q. Okay, and you are his half brother?

8 A. Half brother, yeah.

9 BY MR. LUMUMBA: Thank you. I have no further
10 questions of this witness.

11 CROSS-EXAMINATION BY MR. EVANS:

12 Q. Mr. Campbell, the Defendant sitting at the table
13 over here is your nephew; is that right?

14 A. Yes.

15 Q. How is he your nephew?

16 A. He is my sister's son.

17 Q. All right. And I believe Saturday evening you
18 talked to Robert Jennings, one of my investigators; is that
19 correct?

20 A. Yeah.

21 Q. And I believe you told him that the gun that y'all
22 were shooting when you were in up in Winona was a .22 caliber
23 rifle; is that correct?

24 A. Yeah.

25 Q. Are you familiar with the bullets for a .22 caliber
26 rifle?

27 A. Yes, sir.

28 Q. They are not center fire bullets like a pistol or a
29 rifle, are they?

1 A. No.

2 Q. The hammer hits on the edge of the bullet, doesn't
3 it?

4 A. Yeah.

5 Q. It don't have a firing pin in them?

6 A. No.

7 Q. Do you remember talking to Curtis about the
8 batteries that he dumped off the truck?

9 A. Yeah, we was downtown buying the fish when he
10 pulled up. He seen me. He stopped the truck, and when he
11 pulled back off, the batteries slid out in the street.

12 Q. Do you remember him telling you that he wasn't
13 responsible for the batteries?

14 A. Yeah, he told me he didn't put them on the truck.
15 Whoever put them on the truck was responsible for them.

16 Q. Curtis wanted to go back to New Orleans with you
17 when you left, didn't he?

18 A. Yes.

19 Q. He wanted you to try to find him a job down there?

20 A. Yeah, uh-huh.

21 BY MR. EVANS: No further questions.

22 REDIRECT EXAMINATION BY MR. LUMUMBA:

23 Q. Did Curtis in any way ever express any
24 dissatisfaction with Ms. Tardy or anybody at the Tardy
25 Furniture Store?

26 A. No, uh-uh. He always, he wouldn't just, you know.
27 He just didn't like the job, I guess, because he asked me how
28 much I make an hour, so I told him. He said, I want to come
29 down and get a job with you since he wanted to make more

1 money so, you know, so that was it.

2 Q. Okay. So did he ever say anything was wrong with
3 Ms. Tardy or anything like that?

4 A. No, he didn't say nothing was wrong. All he told
5 me that she had called him to come back to work.

6 Q. Okay, and this is at some time after that date?

7 A. After, yeah, after that date that he dropped the
8 batteries, yeah.

9 Q. He said she had called him to come back to work?

10 A. Yeah.

11 Q. Okay.

12 BY THE COURT: Any further questions of him?

13 BY MR. LUMUMBA: I have no further questions
14 of this witness.

15 BY THE COURT: Is he finally excused?

16 BY MR. LUMUMBA: Yes, he is.

17 BY THE COURT: Mr. Campbell, you are free to
18 leave.

19 WITNESS EXCUSED.

20 BY THE COURT: Who do you have next?

21 BY MR. LUMUMBA: I have Mr. McSparrin. He is
22 right out there in the hall.

23 BY THE BAILIFF: McSparrin?

24 BY MR. LUMUMBA: McSparrin, yes. I think his
25 first name is Michael.

26 (Witness enters the courtroom.)

27 BY THE COURT: Raise your right, please, sir.

28 MICHAEL McSPARRIN,

29 a white male called to testify as a witness by the Defendant,

1 having first been duly sworn, testified as follows, to-wit:

2 **BY THE COURT:** Have a seat up there, please,
3 sir. State your name the record.

4 **BY THE WITNESS:** My name is Mike McSparrin.
5 That is M C capital S P A R R I N.

6 DIRECT EXAMINATION BY MR. LUMUMBA:

7 Q. Mr. McSparrin, could you tell the ladies and
8 gentlemen of the jury how you are employed, please?

9 A. I work for the Criminal Information Center with the
10 Department of Public Safety.

11 Q. And what is it that you do there?

12 A. I am a fingerprint expert for the State of
13 Mississippi.

14 Q. Have you and how long have you been a fingerprint
15 expert?

16 A. Prior to working for the Criminal Information
17 Center, I worked with the Mississippi State Crime Laboratory
18 in Jackson since 1984.

19 Q. And Mr. McSparrin, during the period of time that
20 you worked there, did you ever participate in the examination
21 of fingerprints for the purposes of identification?

22 **BY MR. HORAN:** Your Honor, the State will
23 stipulate he is an expert in that field.

24 **BY THE COURT:** Do you accept that stipulation?

25 **BY MR. LUMUMBA:** I accept that stipulation.
26 I'm going to ask just a couple of more questions,
27 but that will be it. I will accept that.

28 **BY THE COURT:** Okay. The Court accepts him,
29 also accepts him as an expert in the field of

1 fingerprint analysis? Mr. McSparrin?

2 BY THE WITNESS: Yes, sir.

3 BY THE COURT: Okay.

4 BY MR. LUMUMBA:

5 Q. About how many times have you examined fingerprints
6 for comparison purposes?

7 A. Thousands of times.

8 Q. And Mr. McSparrin, can you tell me, please, have
9 you ever been qualified to testify in court before, and have
10 you testified in court before?

11 A. Yes, I have.

12 Q. And about how many different occasions?

13 A. Approximately twenty, twenty-five times.

14 Q. Okay, Mr. McSparrin, I would just like to call your
15 attention to the case involving the Tardy Furniture Store.
16 Were you ever asked to examine any fingerprints in
17 relationship to that particular case?

18 A. Yes, I was.

19 Q. And tell me about that, if you were.

20 BY MR. HORAN: Your Honor, I had agreed
21 previously for Mr. McSparrin's report to come in.
22 Counsel for the Defendant would not allow that.
23 Unless he has got the exhibits and has them marked,
24 things like that, I don't think he can testify
25 about things that he didn't have in his possession
26 or things that have not been admitted.

27 BY THE COURT: He can testify about what he
28 did and what he found.

29 BY MR. HORAN: Yes, sir. But I need to know

1 if he has got those particular exhibits that he
2 compared with him today.

3 BY MR. LUMUMBA: If he doesn't have them, they
4 have them, Judge, so I mean, you know, I think he
5 can testify--

6 BY THE COURT: I'm going to allow him to go
7 ahead. Go ahead.

8 BY MR. LUMUMBA:

9 Q. Yes. Did you examine any prints in relationship to
10 this particular case dealing with the Tardy Furniture Store?

11 A. Yes, I did.

12 Q. Tell us about that, please.

13 A. I examined some latent lifts that were taken from
14 the crime scene that were submitted to the Crime Laboratory,
15 and I did some processing on some casings and a live round
16 that also came from the crime scene, and I also processed a
17 bank bag, a bank receipt book that came from the crime scene,
18 and I processed a shoe box that was submitted later for
19 examination to the State Crime Laboratory.

20 Q. Mr. McSparrin, who-- were you given any prints to
21 compare-- first of all, did you find any prints on any of
22 these items, or were any prints submitted to you which
23 actually came from the crime scene, actually prints?

24 A. From lifts from the crime scene there were latents
25 of value that came from the crime scene. There were latents
26 of value from the shoe box. All the other items that I just
27 discussed, the casings and the live rounds did not have
28 quality latent prints that you could use for a comparison.

29 Q. Now the ones from the crime scene, could you share

1 with the ladies and gentlemen of the jury if you recorded in
2 your report precisely where from the crime scene those prints
3 came from?

4 A. Can I refer to my notes, Your Honor?

5 BY THE COURT: Yes, sir.

6 BY MR. LUMUMBA:

7 Q. Yes, sir.

8 A. The latents from the crime scenes-- now I did not
9 personally work the crime scene. These latents were
10 submitted to me for examination, and the information that was
11 listed on those latent lifts is the only thing I have to go
12 by from what area, what location these latent lifts came
13 from. And just to get you up to speed on what a latent lift
14 is, that is just a fingerprint that is processed at the crime
15 scene that you use a piece of lifting clear tape to lift that
16 latent print off that surface and put it on a card to where
17 it can be used for examination later on. And the latents
18 that I looked at that were from the lifts from the crime
19 scenes that I labeled were L-1 through L-6. And according
20 to my report, they were taken from the Tardy Furniture
21 Company by the individual who worked that particular crime
22 scene.

23 Q. Do you remember who that was?

24 A. No, sir. I don't know exactly who worked that
25 crime scene.

26 Q. Do you know a crime scene investigator by the name
27 of Schoene?

28 A. Melissa Schoene?

29 Q. Yes.

1 A. Yes, I do. Yes, I do.

2 Q. And do you know, did she work at the Crime Lab at
3 that particular time?

4 A. At that particular time, she did work at the Crime
5 Lab.

6 Q. And you just don't recall whether it was her or
7 someone else?

8 A. Well, the case is three years old, and I no longer
9 work at the Crime Lab, and I don't, didn't remember exactly
10 if she was the crime scene analyst that worked that crime
11 scene.

12 Q. Well, let us return to the lifts that you had and
13 that was reported in your records that they came from the
14 crime scene; is that correct?

15 A. Yes, sir.

16 Q. And where at in the crime scene? You probably
17 said; I probably missed that.

18 A. It's from, on my report it's listed as L-1 and L-2,
19 which are two latent lifts, were from the counter top area of
20 the Tardy Furniture Company. L-3 and L-4 were latent lifts
21 from the counter top area of the Tardy Furniture Company.
22 And L-5 and L-6 were from the interior of a passenger side
23 window from a vehicle.

24 Q. From a vehicle?

25 A. Yes.

26 Q. Okay. Now did either one of those -- who did you
27 compare those prints? Who did you compare those prints to?

28 A. The comparisons were performed to two sets of known
29 inked fingerprints submitted on a Curtis Flowers and a Doyle

1 Simpson.

2 Q. Did-- were you able to match any of those prints?

3 A. The latents of value from this case did not match
4 any of the individuals that were submitted for comparison.

5 Q. And that would mean that the latents of value that
6 you got did not match Curtis Flowers; is that correct?

7 A. That is correct.

8 Q. And the latents of value that you got did not match
9 Doyle Simpson; is that correct?

10 A. That is correct.

11 Q. Now did you ever compare any latents of value of
12 Emmitt Simpson at all, to the best of your knowledge?

13 A. No.

14 Q. Or anyone else other than the two people you named?

15 A. Just the two that I just named.

16 Q. Okay. Now let me ask you this. Now let us go to
17 the shoe box. I think you said at some point you had a shoe
18 box?

19 A. Yes. There was a shoe box submitted to be
20 processed for latent prints.

21 Q. Okay, and did you process it?

22 A. Yes, I did.

23 Q. Were you able to find any prints on the shoe box?

24 A. Yes. There were latents of value on the shoe box.

25 Q. Did you make any comparisons of those latents of
26 value?

27 A. Yes. The same two individuals that I compared the
28 earlier latents that I just discussed, I also compared the
29 latents from the shoe box to those two individuals, Curtis

1 Flowers and Doyle Simpson.

2 Q. And were you able to come up with any-- did any of
3 those prints match?

4 A. None of those latents of value from the shoe box
5 matched either one of those individuals.

6 Q. Okay, and this is my final question. When you say
7 that none of the latents of value matched, what does that
8 mean in relationship to those prints and the individuals you
9 are speaking of?

10 A. Well, a comparison was conducted between the
11 latents of value from the shoe box and the latents that were
12 submitted from the crime scene, and a comparison was made to
13 see if the same individual who left those latents at the
14 crime scene and on the shoe box are indeed the same
15 individuals that their inked impressions were submitted for
16 comparison.

17 Q. Okay, and your determination was what?

18 A. They were not identified. The latents of value
19 from the crime scene and from the shoe box were not
20 identified to the two individuals that were submitted to me
21 for comparison.

22 Q. And no one else was submitted to you?

23 A. Yes. No one else was submitted.

24 Q. As to the shoe box, did you ever receive any prints
25 of a young man by the named of Marcus? Not Lemarcus, but did
26 you ever receive any prints of a Marcus Moore or a Marcus who
27 is reported to you to be the son of Connie Moore?

28 A. No.

29 Q. So would it be safe to say that at least as to the

1 prints that you found, that Mr. Curtis Flowers is excluded--

2 BY MR. HORAN: --Your Honor, he can't say it's
3 safe to say. It's his witness. I object.

4 BY THE COURT: That's right. That is leading.

5 BY MR. LUMUMBA: Okay.

6 BY MR. LUMUMBA:

7 Q. As to including or excluding Mr. Flowers as it
8 relates to the prints that you examined, what would you have
9 to say as it related to those prints?

10 A. What I would say as a fingerprint expert as to the
11 comparison that I conducted, that the latents from that crime
12 scene that were submitted to me and the latents that I
13 processed off the shoe box did not match any of the
14 individuals that were submitted to me for comparison. And to
15 my knowledge, they still remain unidentified.

16 BY MR. LUMUMBA: I have no further questions.

17 CROSS-EXAMINATION BY MR. EVANS:

18 Q. Good morning.

19 A. Morning.

20 Q. Mr. McSparrin, I don't believe we have ever met. I
21 am Doug Evans, the District Attorney for the Fifth District.
22 How long were you in fingerprint work at the Crime Lab?

23 A. For the first--

24 Q. --As far as actually testing and testifying?

25 A. Prior to leaving the Crime Lab to go to work for
26 the Criminal Information Center, I was a latent examiner, a
27 certified latent examiner with the Crime Lab for three
28 years.

29 Q. All right. You have enough experience to be pretty

1 familiar with fingerprints; is that correct?

2 A. Yes.

3 Q. Now since you did not go to the crime scene, I want
4 to describe a little bit of the crime scene to you. As a
5 matter of fact, I would like to show you a couple of
6 photographs. (Pause.) First, I will hand you Exhibits 24
7 and 31 which purport to be the counter area and the area
8 where Robert Golden and Carmen Rigby were found laying. I
9 will ask you to look at those.

10 BY MR. LUMUMBA: Can I see those right quick,
11 please, just so I will have an idea what he is
12 looking at.

13 (Photographs handed to Mr. Lumumba.)

14 BY MR. EVANS: If you want to, you can look at
15 the two other ones I'm going to show him.

16 BY MR. EVANS:

17 Q. Okay, in Exhibits 24 and 31, have you had a chance
18 to look at those?

19 A. Prior to this morning, right now? No, I have not.

20 Q. I mean this morning. Have you had a chance to look
21 at them now?

22 A. This is the first time I have seen these
23 photographs. I have had a chance, I have had a chance to
24 look at State's Exhibit 31 and 24.

25 Q. All right, the furniture in there with the cloth on
26 it, as an expert in fingerprints, would you expect to find
27 any fingerprints on those chairs and couches in there?

28 BY MR. LUMUMBA: Judge, I am just trying to
29 find -- I object to the question as ambiguous. He

1 referred to the cloth, and then he referred to the
2 furniture. I assume the furniture has more than
3 cloth on it. So I just want to be clear on what
4 the question is. Is he asking him if he expected
5 to find any on the cloth or on the furniture
6 altogether?

7 **BY THE COURT:** I understood him to ask about
8 the cloth.

9 BY MR. EVANS: Yes, sir. That's exactly what
10 I asked.

11 **BY THE COURT:** Okay, it's overruled.

12 BY MR. EVANS:

13 Q. Did you understand my question?

14 A. Yes, sir. I understood.

15 Q. Would you expect to find any fingerprints of value
16 on that cloth?

17 A. Cloth is not a good surface for the deposit of
18 latent impressions because it's rough; it's not a smooth
19 surface, and it's very difficult to process and to develop
20 latent fingerprint images on a cloth surface.

21 Q. Is it true to actually get a comparison on prints,
22 you have to look at a continuous area and look at the ridges
23 and valleys in there to determine how many of those match?

24 A. (No immediate response.)

25 Q. And end, end points?

26 A. To make a comparison involving fingerprints, all
27 humans are unique individuals as far as the fingerprint
28 images that they have on their hands, the under side of their
29 hands and on the under side of their feet. What experts do

1 in the field of science of fingerprints is this specialized
2 skin has starts and stops, dots. It has multiple ridges that
3 will funnel down to a single ridge. These are known as
4 fingerprint identification characteristics, and what we do as
5 examiners, as experts in the field of fingerprint science, is
6 we take, we look at where these ridges stop and start and
7 where these identification characteristics are located, and
8 we compare them to a set of known inked fingerprint images
9 which are produced in a controlled environment and contains
10 all of these identification characteristics in them, and we
11 try to see if these identification characteristics from these
12 latents, from evidence, will match these inked fingerprint
13 images that are submitted to us for comparison that are taken
14 in a controlled environment. If these identification
15 characteristics in these latents from these crime scenes and
16 from evidence have the same identification characteristics
17 and the same relative position, then an identification is
18 effected.

19 Q. All right, and like on the counter, I understand
20 from what you're saying out of the prints that were
21 submitted, there were only four prints that were even clear
22 enough for you to look at; is that correct? L-1, L-2, L-3
23 and L-4?

24 A. L-5 and L-6, as far as--

25 Q. --L-5 and L-6, I believe was from the car?

26 A. From the vehicle.

27 Q. All right, I'm asking about the store at this
28 time.

29 A. Okay, just inside the store itself, inside the

1 crime scene.

2 Q. Just four prints?

3 A. Yes. There were just four.

4 Q. And those four prints were found on the counter; is
5 that right?

6 A. I was not at the crime scene but--

7 Q. --If you would, look at your notes.

8 A. Okay, the lifts that were submitted to me, yes, it
9 is stated they were found on the counter, yes.

10 Q. Thank you. You didn't lift them?

11 A. No, I did not lift them.

12 Q. But relying on what Melissa Schoene said, they were
13 found from the counter?

14 A. Yes.

15 Q. And the counter in a furniture store, you would
16 expect customers all the time to lean on and touch, wouldn't
17 you?

18 A. Yes. That's-- you would expect any place that is
19 open to the public, retail you would expect a lot of people
20 to come in and put their hands on items at the store.

21 Q. Look at the two photographs I showed you again. I
22 believe they are 24 and 31. To shoot and kill those two
23 people that are laying right there, is there any reason
24 somebody would have had to touch that counter?

25 A. I can't answer that question. I don't know. That
26 is a question that I can't answer.

27 Q. Well, you can answer if there is any reason they
28 would have to.

29 BY MR. LUMUMBA: Judge, I think he has given

1 an answer.

2 **BY THE COURT:** I believe he has.

3 BY MR. EVANS:

4 Q. I will next hand you Exhibits 15 and 13 and ask you
5 to look at those. (State's Exhibits S-15 and S-13 handed to
6 witness.)

7 A. (Witness complies).

8 Q. Are you ready?

9 A. Yeah.

10 Q. You received no lifts of value that were found in
11 the cash drawer, did you?

12 A. That is correct.

13 Q. And you received no prints of value that were found
14 on the safe, did you?

15 A. That is correct.

16 Q. So the two places that money could have possibly
17 been, you have no way of knowing because there were no
18 prints; is that right?

19 BY MR. LUMUMBA: Now Judge, I'm going to have
20 to object to that. I don't know that he knows what
21 the places are in that store where money could have
22 been. I don't have any question asking him about
23 what he found on the safe, what he found in the
24 cash register. But to assume that those are the
25 only places that money could have been, that's the
26 question that I object to.

27 **BY THE COURT:** Okay, well he is on
28 cross-examination. You can come back on redirect
29 and ask him.

1 BY MR. EVANS:

2 Q. Do you remember my question?

3 A. Ask your question again, please.

4 Q. The safe and the money drawer. Now for the purpose
5 of you being an expert, I'm going to go ahead and tell you
6 that there has been testimony that at night the cash drawer
7 would be picked up, put in the safe. In the morning the safe
8 would be unlocked. That cash drawer would be set in the
9 money drawer. You found or you had no prints that were
10 recovered from either one of those objects, did you, the safe
11 or the money drawer?

12 A. That is correct. I did not.

13 Q. And the shoe box, for the purpose of you testifying
14 as an expert, it has been testified that this shoe box was
15 recovered from the house in the bedroom that this Defendant
16 and Connie Moore lived in. Would there be anything unusual
17 in a shoe box in somebody's house not having any prints on
18 it?

19 A. The outside of the shoe box is a good surface for
20 latents. It's a very good surface, but it's not unusual.
21 You don't always leave latent impressions when you handle
22 items. It's--

23 Q. --There's-- oh, I'm sorry.

24 A. I was just going to explain to the jury that it's
25 not automatic that when people handle items, that they
26 automatically leave fingerprint images. That is not
27 necessarily always the case.

28 Q. All right, and there is really no positive theory
29 in fingerprints as to how long prints will actually be

1 recoverable off of an item, are there?

2 A. As far as being able to age?

3 Q. Right.

4 A. No, there is no scientific way to age fingerprints
5 that are found on evidence items.

6 Q. And assuming again from the testimony that it has
7 been testified that Connie Moore picked this box up, carried
8 it to the front of the house, handed it to officers, and then
9 other officers carried it to the Crime Lab, that it would be
10 very easy for their prints to have been on that object. Is
11 that correct?

12 A. If they weren't wearing gloves, it could have been
13 very easy for them to leave fingerprints on those boxes, yes,
14 on that shoe box.

15 Q. But basically what you are testifying to here today
16 is of the things that were submitted to you, the four prints
17 from the counter top and the prints in the car, the only
18 thing that you can say is that those particular prints were
19 not the Defendant's. Is that right?

20 A. That is correct.

21 Q. You are not trying to tell the jury that the
22 Defendant wasn't in the store or the Defendant wasn't in the
23 car; just that your part, what you actually looked at at the
24 lab was not his prints?

25 A. That is correct.

26 Q. Do you still have the photograph of the money
27 drawer up there?

28 A. State's Exhibit 13. Yes, I do.

29 Q. Would you expect prints to be recovered from a

1 drawer like that?

2 A. Since all I have is a photograph, (Pause) - there
3 are so many factors that come into play as far as leaving
4 latent images, latent fingerprint images on evidence items.
5 It's tough to say looking at the photograph. The drawer
6 itself looks pretty worn. That could be a problem. Plus
7 probably the biggest problem in this particular, with this
8 particular photograph with the image that I am looking at of
9 a cash drawer is what happens with money in general. If
10 items are handled, if you have an area or you have an item
11 where it's handled frequently, you run into problems where
12 there is so much fingerprint residue on that item that it is
13 tough to develop a quality latent fingerprint that you can
14 use for comparison purposes.

15 Q. Can I follow up on that just a little. I think I
16 understand what you are saying. And I want to make sure that
17 I am right. Just say, for instance, if you were trying to
18 lift prints off of the front of this photograph. If I passed
19 this photograph to the jury and they each handled it and
20 their prints were on top of each others prints, when you
21 dust, all you are going to have is a big smear; is that
22 right?

23 A. That is called an overlay, and you would have a
24 problem with being able to develop and lift that fingerprint
25 image off of that photograph, if that were the case.

26 Q. And for the four actual prints that you had enough
27 to look at, what that means is those were things that were
28 touched in a place that hadn't been over laid by other
29 people?

1 A. That's correct.

2 Q. Okay. So if Melissa Schoene was not able to lift
3 any prints from the drawer, it could be because it had been
4 wiped off, or it could be because just so many people had
5 handled it, that prints couldn't be clearly lifted. Is that
6 correct?

7 A. That's correct. It could be that it had been
8 cleaned. It could be that someone was, happened to be
9 wearing gloves. It could be a lot of circumstances that come
10 into play.

11 Q. Okay.

12 (State's Counsel confer briefly.)

13 Q. All right, the car-- you don't have the prints with
14 you, do you?

15 A. No, I do not.

16 Q. Do you remember, can you tell us from your notes
17 what part of the car those two prints were recovered from?

18 A. The only thing that I can give you information wise
19 is from my report, and it's, the latents from the car,
20 interior passenger side window, and that's all I have to go
21 by.

22 Q. Okay, and they were from the window?

23 A. I believe they were. Yes.

24 Q. There were no prints of value that were recovered
25 from the glove box, were they?

26 A. Not submitted to me, no.

27 Q. And again, in a window, prints will last on a
28 window for quite a while unless that window is cleaned;
29 right?

1 A. If it's interior wise unless it's cleaned -- the
2 situation you run into with glass because it's a smooth
3 surface is it's a good surface to develop latent fingerprints
4 from, but it is also a very easy surface to wipe latent
5 fingerprints away from.

6 Q. Okay. My question is this. Glass is a substance
7 that prints normally stay on fairly well; is that right?

8 A. That is correct.

9 Q. So prints on this glass, unless that glass had been
10 cleaned, could have been there for a long time; is that
11 correct?

12 A. That is correct.

13 Q. And again, based upon your experience, do you know
14 of any reason that someone would have to touch the window to
15 open a glove box?

16 A. On the passenger side or the driver's side window?

17 Q. Either one.

18 A. Not to, I mean I am just logically thinking that to
19 open a glove box, no, you wouldn't have to touch the window
20 necessarily.

21 Q. And there were no prints on the glove box?

22 A. That were submitted to me with this case, no, there
23 were no latents.

24 Q. And Melissa Schoene is a qualified crime scene
25 expert; is that correct?

26 A. That's correct.

27 Q. And is she good at lifting prints?

28 A. Yes, she is.

29 BY MR. EVANS: Nothing further.

1 REDIRECT EXAMINATION BY MR. LUMUMBA:

2 Q. Okay. Mr. McSparrin, who submitted the, who asked
3 the lab to analyze the prints? Was that the Defense team, or
4 was it the police department and the State or do you know?

5 BY MR. EVANS: Your Honor to start with, that
6 is not something we went into, and it is something
7 that is really ridiculous. I think everybody knows
8 who submitted them.

9 BY MR. LUMUMBA: Well, I don't know that being
10 ridiculous is an objection first of all, Judge.
11 But the second part on that is I think it is
12 relevant. I believe the State has the burden of
13 proof, and it almost sounds like someone is trying
14 to put it on the Defense here. So I'm just trying
15 to find out who submitted the prints in the first
16 place.

17 BY THE COURT: Ask the question. But let's,
18 now on redirect, of course, you are limited to what
19 he brought out on cross-examination. But I will
20 allow that question.

21 BY MR. LUMUMBA:

22 Q. Okay. Do you know?

23 A. I know this. I can tell you this. The criminal,
24 the CIB with the Department of Public Safety which is their
25 investigator division, Winona PD and the county which is--

26 Q. Hinds-- no, no.

27 A. I know all three of them submitted evidence.

28 Q. Okay, but would that have been Montgomery County?

29 A. Yes, Montgomery County.

1 Q. Okay, well, let me ask you this. You spoke about
2 Melissa being trained in the field and being a good person at
3 her job; is that correct?

4 A. Yes.

5 Q. And her name is-- and I'm sorry I just use her by
6 the first name, Melissa. But Schoene is her last name; is
7 that correct?

8 A. Yes.

9 Q. Okay. Are the people who do this job, are they--
10 is part of their job to try to ascertain where to get prints
11 from which may be of use in identifying the culprit in the
12 case?

13 A. Individuals that work crime scenes, yes, are
14 trained to be able to process for latent fingerprint
15 impressions at a crime scene, yes.

16 Q. And they would -- and a point of interest of
17 trying to get any prints would be at a place that may have
18 been--

19 BY MR. EVANS: --Your Honor, object to him
20 leading his own witness.

21 BY THE COURT: You are leading.

22 BY MR. LUMUMBA:

23 Q. What kind of places would they be looking for
24 prints in? Would they be looking for prints at places where
25 they are not likely to find prints or places where they are
26 likely to find them?

27 A. Not being a crime scene analyst myself but having
28 worked with them, they are going to look for point of entry.
29 They are going to look for other areas to where, that

1 involves the crime scene, that they are going to look to try
2 to see if they can't process fingerprints.

3 Q. Okay, well, let me ask you this. Let me just give
4 you a couple of scenarios. If it was reported that this was
5 a cash drawer right here, and if someone suspected that some
6 funds may have been taken from the cash drawer, and if this
7 cash drawer is right on top, do you see what appears to be on
8 top of the cash drawer?

9 A. In State's Exhibit 13--

10 Q. Yes.

11 A. --it appears to be -- I'm taking a guess just
12 looking at this photograph. It's an educated guess. It
13 appears to be fingerprint powder is what it appears to be to
14 me.

15 Q. Does that appear to be a counter up there?

16 A. A laminate counter, yes, it does.

17 Q. Okay. Is a counter a good surface to get prints
18 from?

19 A. It's an excellent surface. Yes, it is.

20 Q. Now we-- I am posing a hypothetical. If people
21 before they close up at night clean off their counter or wipe
22 their counter, would that eliminate all the prints from the
23 customers that had been there that day--

24 BY MR. EVANS: --Your Honor, there is nothing
25 in evidence. As a matter of fact, just the
26 opposite on that. He cannot propose a proposal to
27 him that is not in evidence.

28 BY MR. LUMUMBA: I think I can propose a
29 proposal which is reasonably logical and it is

1 certainly-- a lot of hypotheticals that Counsel
2 proposed nobody testified to.

3 **BY THE COURT:** I think there was sufficient
4 amount of information on cross-examination to allow
5 you to ask that question.

6 BY MR. LUMUMBA: Thank you.

7 BY MR. LUMUMBA:

8 Q. If a counter is wiped clean once at the close of
9 business, would that eliminate prints assuming that it was a
10 thorough wiping?

11 A. Yes, it would.

12 Q. And this may be-- would that have any effect on any
13 prints which may arise from a touching subsequent to the time
14 the counter was wiped?

15 A. Well, what it would do and as I testified to
16 earlier, you can't scientifically determine the age of a
17 latent fingerprint image that is left on a surface.
18 Scientifically, you can't. But if a counter at a jewelry
19 store, let's say, had been cleaned up with Windex the night
20 before and the people who work at this particular store come
21 in the next morning and there is fingerprints all over it and
22 there is items missing, you can pretty much say that somebody
23 was in there after this counter was cleaned. I can say that
24 much. But you can't scientifically age latent fingerprint
25 images.

26 Q. Okay, and my final question is have you made any
27 identification of any prints submitted to you from anywhere
28 with Curtis Flowers?

29 A. No, I have not.

1 BY MR. LUMUMBA: I have no further questions.

2 BY THE COURT: Is he finally excused?

3 BY MR. LUMUMBA: Yes, he is as far as I am
4 concerned. I don't know about Counsel.

5 BY MR. EVANS: Yes, sir.

6 BY THE COURT: You are free to go.

7 BY THE WITNESS: Thank you, Your Honor.

8 WITNESS EXCUSED.

9 BY THE COURT: Who do you have next?

10 BY MR. LUMUMBA: We would like to call Ms.
11 Montgomery if she is here.

12 BY MR. HORAN: Your Honor, can we approach for
13 just a minute on something?

14 BY THE COURT: Yes.

15 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
16 THE JURY AS FOLLOWS:)

17 BY MR. HORAN: Your Honor, we offered the
18 report and Ms. Montgomery does not have the exhibit
19 she is going to be testifying about, and they are
20 not going to be introducing it into evidence.

21 BY THE COURT: Who is Ms. Montgomery?

22 BY MR. HORAN: DNA analyst.

23 BY MR. LUMUMBA: She is the DNA analyst who
24 analyzed the--

25 BY MR. HORAN: --that these items I am able to
26 cross-examine her about these particular amounts.
27 She does not have these exhibits.

28 BY MR. LUMUMBA: Let me say this, Judge.

29 BY MR. HORAN: It's not proper for him to call

1 her and let her talk about the exhibits that are
2 not in evidence. That is not proper.

3 **BY THE COURT:** She is not talking about-- as
4 far as I know, she is not talking about exhibits.
5 She is talking about her opinion that she made from
6 the DNA. Why can't she do that? She doesn't have
7 to have a record to do that. It probably hurts the
8 credibility of it, but she can give her opinion
9 without having the evidence. You haven't got to
10 put the fingerprint stuff on. You don't have to
11 put that into evidence.

12 **BY MR. HORAN:** I understand that. I
13 understand that.

14 **BY THE COURT:** She can say what she did and
15 what her opinion was after she did it.

16 **BY MR. HORAN:** Okay.

17 **BY THE COURT:** I mean--

18 **BY MR. HORAN:** --That's fine.

19 **BY THE COURT:** She could have been-- if you
20 wanted them here, you could have filed a subpoena
21 duces tecum, and she would have had to bring them.

22 **BY MR. HORAN:** It's not my proof.

23 **BY THE COURT:** Well, that is exactly right.
24 It's not your proof--

25 **BY MR. HORAN:** --case in chief.

26 **BY THE COURT:** That's right. But you are
27 objecting to something that you have got no
28 standing to object to. She can testify--

29 **BY MR. HORAN:** --it's not that--

1 **BY THE COURT:** --what her opinion was--

2 (Both Mr. Horan and the Court were talking at
3 the same time.)

4 **BY MR. HORAN:** --I just thought we follow the
5 rule--

6 **BY THE COURT:** --you can cross-examine her.
7 If you want to cross-examine her, you should have
8 subpoenaed her.

9 **BY MR. EVANS:** Your Honor, just for the record
10 and I know the Court has already ruled. But if we
11 were trying to introduce it, we would not be
12 allowed to introduce it without having the exhibits
13 here. The same--

14 **BY THE COURT:** --Well, I don't know about
15 that.

16 **BY MR. EVANS:** --same thing--

17 **BY MR. HORAN:** --You mean we can have an
18 expert testify about cocaine without the cocaine
19 being introduced? I don't think so.

20 **BY THE COURT:** Without the cocaine, no, Kevin,
21 but without the--

22 **BY MR. HORAN:** --of course--

23 **BY THE COURT:** --but the writing of the
24 analysis. She wasn't going to have the blood. You
25 don't bring the blood here. That is a difference.

26 **BY MR. HORAN:** The clothing?

27 **BY THE COURT:** Well, yeah, I would probably
28 let you get it in without bringing the clothing.

29 **BY MR. HORAN:** I will remember that.

1 END BENCH CONFERENCE.

2 BY MR. LUMUMBA: She is here, Judge.

3 **BY THE COURT:** Ms. Montgomery.

4 BY MR. LUMUMBA: Yeah, we call Ms.
5 Montgomery.

6 (Witness enters courtroom.)

7 **BY THE COURT:** Raise your right hand, please,
8 ma'am.

9 **ANNE H. MONTGOMERY,**
10 a white female called to testify as a witness by Defendant,
11 having first been duly sworn, testified as follows, to-wit:

12 **BY THE COURT:** Have a seat.

13 DIRECT EXAMINATION BY MR. LUMUMBA:

14 Q. Ready? Can you give me your name for the record
15 again, please.

16 A. Anne H. Montgomery.

17 Q. And Ms. Montgomery, could you tell the ladies and
18 gentlemen of the jury what it is that you do?

19 A. My title is Forensic Lab Director, and I am
20 employed at a private firm called Reliagene Technologies,
21 which is DNA testing laboratory located in the New Orleans
22 metropolitan area.

23 Q. Now I'm going to ask you just a couple of questions
24 about your qualifications because I believe The State has
25 stipulated--

26 BY MR. HORAN: --I stipulate, Your Honor, that
27 she is an expert in the field of forensic, I guess
28 it would be forensic DNA analysis? Is that
29 correct, Ms. Montgomery?

1 BY THE WITNESS: Usually I qualify as
2 molecular biology and DNA analysis.

3 BY MR. HORAN: Okay, tender-- I would accept--

4 BY THE COURT: --Okay, I will accept her as an
5 expert in that field, and I will not try to repeat
6 it. (Laughter.)

7 BY MR. LUMUMBA:

8 Q. How long-- let me, just for the benefit of the
9 ladies and gentlemen of the jury, how long have you worked in
10 that field?

11 A. For the past nine years. I received a Bachelor of
12 Science degree in 1977 from the University of Florida in
13 microbiology. My senior year there was spent doing a DNA
14 project at the Medical Center. In 1984, I received my Master
15 of Science degree from Louisiana State University Medical
16 Center in New Orleans, and there my master's thesis involved
17 DNA mapping of the human herpes simplex virus. But for the
18 past ten years I have been working at Reliagene and
19 performing DNA profiling primarily for forensic applications
20 but also for medical or paternity applications as well.

21 Q. And where is that located?

22 A. In New Orleans, Louisiana.

23 Q. Okay, now in your experience are you called upon to
24 do work for any particular side of a case? Let's speak to
25 criminal cases first of all.

26 A. Okay. The bulk of the case work that I am
27 responsible for and sign off on reports are forensic and
28 criminal in nature. As a private firm, we are hired either
29 by law enforcement agencies or defense counsel or private

1 individuals.

2 Q. Okay, have you done work for law enforcement
3 agencies?

4 A. Yes. Numerous cases.

5 Q. Did you do any analysis in this case?

6 A. Yes. Reliagene did.

7 Q. And could you tell me, please, who asked Reliagene,
8 if anybody, to do the analysis? Was it the State or was it
9 the Defense?

10 A. We were contacted by the Mississippi Crime Lab and
11 asked to perform DNA profiling at the request of the
12 Mississippi Highway Safety Patrol.

13 Q. And do you have a name with that?

14 A. Yes. A Master Sergeant Jack Matthews requested
15 that the Mississippi Crime Lab send us some samples for
16 analysis.

17 Q. Now I'm going to ask you first of all, what was it
18 that you analyzed, if you can share that with the ladies and
19 gentlemen of the jury?

20 A. Sure. We received a number of items of evidence.
21 There were two cuttings that were described as cuttings from
22 navy shorts; two cuttings that were described as cuttings
23 from shirt; and five cuttings that were described as cuttings
24 from white dress shorts or white casual shorts. In addition
25 to those samples, subsequent to those we received four known
26 reference samples.

27 Q. And the four known reference samples, what were
28 they?

29 A. They were described as known blood from Robert

1 Golden, known blood from Bertha Tardy, known blood from
2 Carmen Rigby, known blood from Derrick Stewart.

3 Q. I am showing you an exhibit which is already in
4 evidence and it is marked D-2. It is marked D-2 as an
5 exhibit. Would you like to see it?

6 BY MR. EVANS: No, we have already agreed
7 earlier that we have no problem with this being
8 introduced into evidence, Your Honor.

9 BY MR. LUMUMBA: Okay, yeah--

10 BY THE COURT: --Do you want to admit it?

11 BY MR. LUMUMBA: I think it is already
12 admitted.

13 BY MR. EVANS: No, sir. He didn't want us to
14 admit it the other day, but we will agree again
15 that we have no problem.

16 BY THE COURT: Did you look at that?

17 BY THE WITNESS: Yes, I did.

18 BY THE COURT: Did you recognize it?

19 BY THE WITNESS: Actually I have, I think what
20 is the original of this item marked Defendant's
21 Exhibit D-2.

22 BY MR. LUMUMBA: For the record, Judge, that
23 is in evidence. That D-2 is in evidence already.

24 BY MR. LUMUMBA:

25 Q. Can you share with me, please, what does D-2, what
26 does it represent?

27 BY THE COURT: Let me see it.

28 (Pause while the Court looks at Exhibit D-2.)

29 BY THE COURT: Okay.

1 BY MR. LUMUMBA:

2 Q. Well, first of all, maybe I should ask do you have
3 anything in your possession which corresponds to D-2?

4 A. Yes. I believe I have the original document that
5 was sent along with the samples to be analyzed at our
6 laboratory. It's addressed to me signed by Debbie Haller
7 dated September 3rd, 1996, describing the unknown samples
8 that we have been requested to analyze, and then basically it
9 says to contact them if we isolate enough DNA on those
10 samples to obtain some known reference samples to compare the
11 knowns against the unknowns.

12 Q. So I guess the reason I asked you that question is
13 who-- can you tell me who sent you the samples-- you talked
14 about some cuttings from some shorts that you analyzed. Who
15 sent you the samples that you received? That's basically
16 what I'm trying to--

17 A. --Okay, those samples were sent to our laboratory
18 via Airborne, which is a courier, an overnight courier we use
19 to transport evidence. And it was sent by Debbie, Deborah
20 Haller, who is a forensic scientist at the Mississippi Crime
21 Lab in Jackson.

22 Q. Okay. Now did you compare those samples with
23 anything in particular?

24 A. Well, we initially received the unknown cuttings,
25 and we were asked to examine those, and if we were able to
26 obtain a DNA profile, they would then submit the references
27 to us, which they did. So when we issued the report dated
28 December 23rd, 1996, we itemized the unknown cuttings that we
29 received and the known reference cuttings and issued out our

1 findings.

2 Q. Now if you can, first of all, tell the ladies and
3 gentlemen what your findings were, and then I'm going to back
4 track and tell you to tell them how you got there, if you can
5 do that; okay?

6 A. Okay.

7 Q. Tell the ladies and gentlemen what were your
8 findings?

9 A. Basically, we were able to profile some of the
10 cuttings that were submitted to us, the unknown samples.
11 Some of them didn't have enough sample present, so we either
12 got no result or inconclusive. Some of them gave us a
13 profile consistent with a single donor, and then I think two
14 of them gave us a profile consistent with at least two donors
15 in the profile. When we compared those against the known
16 reference samples from the four individuals we received, we
17 were not able to see any consistency between the unknowns and
18 the references. So what that means is that we had to exclude
19 those four known reference samples as a donor for any of
20 those unknown stains that we analyzed.

21 Q. Now when you say you excluded the four known, what
22 you call them known what?

23 A. The known reference samples.

24 Q. Known reference. Who were the known reference
25 samples?

26 A. Again, Mr. Robert Golden, Bertha Tardy, Carmen
27 Rigby, Derrick Stewart were the four known reference samples
28 we received. And none of those four individuals could have
29 been a contributor to any of the stains that we examined.

1 Q. Okay, and would that mean that-- now when you say
2 they are a contributor, how could they have contributed? How
3 do you contribute to a stain?

4 A. Well, basically just a quick synopsis on DNA. DNA
5 stands for deoxyribonucleic acid. It's a molecule that we
6 obtain at the moment of conception. When the egg and the
7 sperm unite, we get 23 chromosomes from our biological
8 mother, 23 from our biological father to get 23 pairs of
9 chromosomes. A chromosome is mother nature's way of
10 packaging the DNA inside a cell. So since every cell in the
11 human body contains this DNA virtually, if you took blood
12 from my arm, saliva from my mouth, hair from my head, or
13 tissue from my skin and did a DNA profile on that, it would
14 show the same profile irrespective of what sample source it
15 was as long as it came from the same individual.

16 So when we are profiling clothing, you can get a
17 DNA profile on a stain from clothing. It could be sweat; it
18 could be blood; it could be saliva. It could be just about
19 anything. And so typically the samples we receive are
20 unknown stains, and we are asked to compare them against
21 known samples, and if the known sample could have been a
22 contributor to the stain.

23 Q. Okay, very good. And your determination again was
24 that neither one of these four people were contributors to
25 any stains on the clothing that you, or the cuttings that you
26 analyzed; is that correct?

27 A. Correct. They are a hundred percent absolutely
28 excluded as being the donor of the stains that we analyzed.

29 Q. Now typically, the clothing that you're analyzed,

1 analyzing, that would come from the suspect. Is that
2 correct?

3 A. It depends. Sometimes we can obtain cuttings from
4 suspect clothing; sometimes cuttings from victims' clothing.
5 Sometimes it can be pieces of carpet, furniture, sofa, just
6 any type of substrate which is the item where a stain has
7 been deposited.

8 Q. We have had a previous witness, I think, that
9 addressed the issue of where they came from. But can you
10 tell me, please, is it anything in your notes that indicates
11 whether these are supposed to have come from a suspect's
12 clothing?

13 A. In the letter from Deborah Haller it says, "These
14 cuttings are from the suspect's clothes which were collected
15 sometime after the murder." When we issued our report, we
16 typically in the first page describe the victims that we have
17 been told about or the suspects. In the report I have the
18 victims, Robert Golden, Bertha Tardy, Carmen Rigby, Derrick
19 Stewart. Under suspect, I have unknown.

20 Q. Okay. Ms. Montgomery, realizing that we are lay
21 people and we don't know a lot about science, can you
22 basically in a nutshell tell the ladies and gentlemen how you
23 arrived at your conclusion, and then again at the end of
24 that, just tell us again what your conclusions were; okay?

25 A. Okay. I have some charts that might be helpful.

26 Q. Very good.

27 A. I don't know if you are interested in looking at
28 them.

29 BY MR. LUMUMBA: Okay. I'm going to ask that

1 these be marked after I show them to the District
2 Attorney.

3 BY MR. EVANS: No objection.

4 BY THE COURT: Are you going to put them in
5 evidence?

6 BY MR. LUMUMBA: Yes.

7 BY THE COURT: Any objection to them being
8 admitted?

9 BY MR. EVANS: None at all.

10 BY THE COURT: Okay, let them be marked as
11 exhibits if that's what you are asking.

12 (DNA TEST RESULTS CHART AND CHART OF TEST
13 RESULTS FROM CLOTHES COMPARED WITH VICTIMS' DNA
14 WERE MARKED AND RECEIVED IN EVIDENCE AS DEFENDANT'S
15 EXHIBITS D-18 AND D-19.)

16 BY MR. LUMUMBA:

17 Q. We have now introduced into evidence Exhibits D-18
18 and D-19. Could you please refer to the numbers whenever you
19 need to in order for the record will record what you are
20 talking about.

21 A. Is it-- do I have the permission of the Court to
22 step down and explain this to the jury?

23 BY THE COURT: Yes, you do.

24 Q. If you need me to hold anything, I will do it.

25 (Witness steps down in front of jury box.)

26 A. Okay. You probably aren't going to be able to see
27 this very clearly, but if I explain the layout of these
28 charts, at a later time you may have a chance to look at
29 these, and you will understand the orientation. The shape,

1 the top most column describes the item that we analyzed, and
2 these are descriptions that are sent to us from the
3 submitting agency. We don't alter the description of the
4 item. Above the description is the Reliagene or GenTest
5 sample number from our laboratory that assigns a unique
6 number for each of these cuttings.

7 So there are two charts. One chart describes the
8 unknown cuttings. The second chart, which is D-19 -- D-18
9 was the first chart. The second chart, D-19, describes three
10 more of the unknown cuttings and then shows the four
11 reference samples that we analyzed. The left most column of
12 each of these charts, which basically looks like alphabet
13 soup with letters and numbers, describe the individual
14 genetic tests that we ran for these samples. We use, the
15 scientists use nomenclature like LDLR, which stands for low
16 density lipoprotein receptor. You just need to know that
17 these are individual genetic tests that we typically run on
18 samples at the laboratory.

19 Now underneath each column it gives the results for
20 the samples that we tested, some of which show NR which is
21 described in the chart as no result. Some are described as
22 INC, which is inconclusive. And some of them show letters
23 and numbers like B or AB or 1.1,4. These are the actual test
24 results that we obtained when we analyzed these samples. So
25 straightforward you look at the reference profiles, and you
26 can determine based on the composite profile that these
27 individuals have different profiles.

28 And for example, DQA1 test results show Robert
29 Golden being a 3. He is a 3 homozygous meaning he got 3 from

1 each of his biological parents. Ms. Bertha Tardy is a 1.3,2,
2 and they differ from each other. If anything differs at any
3 point, it's a different donor. Specifically, you see in all
4 four of these reference samples, I see differences in the
5 profile, so I know these are clearly distinguishable from
6 each other.

7 I next look at the unknown samples and compare the
8 profile of the knowns against the unknowns. And if you look
9 at the bottom test, the DQA1 test, it is probably the most
10 straightforward. None of the unknowns show the profile that
11 I'm looking for which would have to be the identical results
12 for the whole column. Now although cutting from white dress
13 shorts shows a 3 in addition to other numbers, it's a
14 mixture. And the reason I can say it doesn't belong to
15 Robert Golden is because up above here in the LDLR test, the
16 stain on the white shorts shows a B homozygous. Mr. Golden
17 is an AB. Because of the absence of the "A," I know he could
18 not have contributed that stain.

19 So basically what you do is compare the composite
20 profile against the known references to see if any
21 individual could have been the donor or a mixture of anybody
22 could have been the donor. And after doing this evaluation,
23 I conclude that absolutely none of these four individuals
24 could have been the donor for any of the cuttings that we
25 analyzed.

26 BY MR. LUMUMBA: I will pass these to the jury
27 if that's okay.

28 (Exhibits D-18 and D-19 were passed to the
29 jury.)

1 BY MR. LUMUMBA:

2 Q. Now in my, probably my final question and I am sure
3 the State will have a number of questions for you, but my
4 final question is going to be like in the stains, okay,
5 essentially do you know what the stain actually was? In
6 other words, I mean we already know from your testimony that
7 they didn't belong to any of these people that we have just
8 finished talking about; right?

9 A. Correct.

10 Q. Okay, but do you know what the stain actually was?
11 Was it blood? Was it saliva or can you tell us?

12 A. We did not, the laboratory that I work at did not
13 perform any analysis to determine the type of stain it was.
14 We can simply tell you the stain is human specific. It is
15 not animal blood or animal saliva. It is human specific, and
16 it's a stain, and beyond that I really can't conclusively
17 tell you what the source of the stain is, whether it's
18 saliva, blood, sweat, semen. I don't have an opinion as to
19 that.

20 Q. Do all of those different things produce DNA?

21 A. Yes.

22 Q. Saliva?

23 A. Yes.

24 Q. Sweat?

25 A. Yes.

26 Q. Semen?

27 A. Yes.

28 Q. And blood?

29 A. Correct. Yes.

1 BY MR. LUMUMBA: Okay.

2 BY MR. HORAN: Your Honor, I would like to
3 proceed after the exhibit has been passed if it's
4 all right with the Court.

5 BY THE COURT: Okay.

6 (Long pause while waiting for the jury to look
7 at the exhibits.)

8 CROSS-EXAMINATION BY MR. HORAN:

9 Q. Ms. Montgomery, if you would-- you have your
10 report, do you not?

11 A. Yes, I do.

12 Q. Would you take it out, please. The jury is just
13 about through looking at the exhibits, and I am going to
14 start talking to you momentarily. I will give it back to
15 you, I promise.

16 A. Okay.

17 Q. My copy is not too good. Do you have another copy
18 of it by any chance?

19 A. I don't have an extra copy, but this can be copied
20 if somebody wants to copy it.

21 Q. I have got the conclusion, but the first.

22 (Document was handed to Mr. Horan, who looked
23 at it and then gave it back to the witness.)

24 Q. I will hand it back to you. Thank you.

25 (Mr. Horan gets exhibits back from the jury.)

26 Q. Ms. Montgomery, tell me, you just testified that
27 you could not identify any of these particular stains as
28 blood; right?

29 A. That's correct. I did not perform any testing to

1 that effect.

2 Q. It could have been saliva?

3 A. Yeah. Well, like I said, I didn't do any of those
4 testing. I think the Crime Lab did some analysis prior to my
5 receipt, but I did not perform that analysis.

6 Q. Now from the shorts, the navy shorts?

7 A. Yes.

8 Q. Did you find any stain on that?

9 A. No. Those gave us no result.

10 Q. And from the shirt?

11 A. Those we reported out as inconclusive, and that is
12 most likely due to a minimal sample. You need a certain
13 amount of sample to get an analysis. If it's too minute, we
14 won't be able to get a result.

15 Q. And from the white dress shorts, the cuttings from
16 the white dress shorts, did you obtain anything?

17 A. Yes. We received, we obtained several profiles
18 from those shorts. One consistent with a single donor and
19 one consistent with a mixture.

20 Q. Okay, and that would be, which number was the
21 single donor?

22 A. For the shorts?

23 Q. Right.

24 A. 96-100655 is consistent with a single donor as is
25 96-100658.

26 Q. Okay. Those are single donors; right?

27 A. In my opinion, yes.

28 Q. And which were the multiple donors?

29 A. The 96-100656 and 96-100657.

1 Q. Were you submitted the blood of the Defendant,
2 Curtis Giovanni Flowers?

3 A. No. We did not receive that sample.

4 Q. So you cannot say that the blood, or whatever it
5 was if it was blood, was on the shorts that were submitted to
6 you? You could not exclude him?

7 A. Correct.

8 Q. Or members of his family?

9 A. Correct.

10 Q. All right. And you made notations that samples
11 were recovered some times after the murder? Is that what
12 the report to you was, the report from the Mississippi Crime
13 Lab?

14 A. I don't know when the crime was committed.

15 Q. No, I'm asking about your report. What does it
16 say?

17 A. The date we received the samples were September
18 4th, 1996.

19 Q. No, that is not my question.

20 A. I'm sorry.

21 Q. He asked you about your report and which was
22 submitted to you by the Crime Lab, and this being Exhibit D-2
23 from Debbie Haller says, "These cuttings are from the
24 suspect's clothes which were selected some time"--

25 A. --Oh, I'm sorry.

26 Q. --"after the murders"; right?

27 A. Correct. That's what the letter says.

28 Q. Are there any long pants submitted to you for any
29 analysis purposes? Either dark blue or black or anything

1 like that?

2 A. We didn't receive any bulk evidence at all, and we
3 simply received the cuttings that I have described, the
4 shorts--

5 Q. --Any cuttings from those, that particular item?

6 A. Long pants, no.

7 Q. And you can't say. Your information was not that--
8 strike that. You didn't have information or the letter to
9 you from Debbie Haller didn't provide information that these
10 cuttings came off the body of Curtis Giovanni Flowers on that
11 particular date, the date of the murders, does it?

12 A. No, it does not.

13 Q. Now you don't know of your own personal knowledge--
14 they submitted these to you for the sole purpose of DNA
15 analysis; right?

16 A. Correct.

17 Q. And you did that?

18 A. Correct.

19 BY MR. HORAN: No further questions.

20 BY THE COURT: Redirect?

21 BY MR. LUMUMBA: Just this.

22 REDIRECT EXAMINATION BY MR. LUMUMBA:

23 Q. When you use the term "they" submitted to you, once
24 again who is the "they"?

25 A. "They", I am referring to the Mississippi Crime Lab
26 sent us the samples at the request of the Mississippi Highway
27 Safety Patrol.

28 Q. That was Mr. Jack, uh?

29 A. Matthews.

1 Q. Matthews, okay. And if there was a statement as to
2 they received the evidence some time after the incident; if
3 there was testimony in evidence, and I believe there has
4 been, if I were to give you a hypothetical that they received
5 the evidence that they sent you somewhere around July the
6 20th when Mr. Matthews went and picked it up at Mr. Flowers'
7 house and the incident happened on July the 16th, that would
8 be consistent with the statement "some time after," wouldn't
9 it?

10 A. Yes. I think that would be.

11 Q. Okay.

12 **BY THE COURT:** Is that all from her?

13 **BY MR. LUMUMBA:**

14 Q. And you would have analyzed anything they sent you;
15 right?

16 A. Correct.

17 **BY MR. LUMUMBA:** I have no further questions.

18 **BY THE COURT:** Is she finally excused?

19 **BY MR. LUMUMBA:** Yes, she is as far as we are
20 concerned.

21 **BY MR. EVANS:** Yes, sir.

22 **BY THE COURT:** Ms. Montgomery, you are free to
23 go.

24 **BY THE WITNESS:** Thank you.

25 **BY THE COURT:** Y'all want to take a break?

26 **BY MR. LUMUMBA:** Yeah.

27 (FOLLOWING THE MORNING RECESS ON MARCH 29,
28 1999, PROCEEDINGS CONTINUED IN OPEN COURT **OUT OF**
29 **THE PRESENCE OF THE JURY** WITH THE COURT, ALL

1 COUNSEL, AND THE DEFENDANT PRESENT:)

2 BY THE COURT: Y'all had a matter you wanted
3 to raise?

4 BY MR. LUMUMBA: Yes. Actually, we expect
5 today to call a gentleman by the name of Odell
6 Hallmon, or actually I think his name is actually
7 Hollman, but I think they have got him listed in
8 the jail as Hallmon, but his name is Hollman. In
9 any event, he is presently incarcerated, and he
10 has, he has been convicted of aggravated assault.
11 To best of our knowledge, that is the only
12 conviction he has, and I think that we are entitled
13 to some kind of notice if the State has any other
14 convictions on him. That's the only felony
15 conviction, or he has never been convicted of a
16 misdemeanor to my knowledge that has anything to do
17 with impugned credibility.

18 Our position is that that aggravated assault
19 conviction is not relevant on the balancing test of
20 more probative than prejudicial. It is really not
21 relevant to his credibility. It has nothing to do
22 with any kind of credibility. You know, it
23 doesn't, it's not like perjury, or I would even
24 concede, even though I'm not even sure the law
25 does, but maybe even something like stealing or
26 cheating or embezzlement, all those things might
27 indicate in some way that a person has credibility
28 problems. But I don't think that this does, and
29 for that reason even though I think he got

1 sentenced to three years on a-- I don't know if it
2 was aggravated assault or attempted aggravated
3 assault. I'm not sure which one it was.

4 BY MR. HORAN: Aggravated assault.

5 BY MR. LUMUMBA: Okay. I don't believe that
6 that would impugn his credibility, and for that
7 reason I would ask the Court to exclude that Motion
8 in Limine.

9 BY THE COURT: Okay, this is pursuant to Rule
10 609; is that right?

11 BY MR. LUMUMBA: Yes, sir.

12 BY THE COURT: Okay. The Court is going to
13 rely on Young v. State which was rendered by the
14 Supreme Court on the 21st day of January, 1999, in
15 cause number 97-CP-00162 SCT. They addressed this
16 particular-- they directly addressed this issue and
17 held that 609 does not apply to witnesses. It only
18 applies to defendants or to parties. So therefore,
19 it is not a 609 question, and his convictions are,
20 you can go into his convictions. It also provided
21 that I did not have to make a Peterson balancing
22 test. So the Motion in Limine is overruled.

23 BY MR. LUMUMBA: Okay. One other issue then,
24 Judge. If they are going to be allowed to go into
25 it, I want to be able to raise the limitations of
26 what they can go into. Now I understand according
27 to what Counsel has already described to me, they
28 want to ask if he was ever in the same institution
29 with the Defendant. And I don't have a problem

1 with them asking if they were ever in the same
2 place at the same time, in the same facility. Just
3 to give the Court the background, they were
4 incarcerated in Parchman prison at the same time.
5 Of course, we know that that is something the jury
6 should not be able to know about the Defendant.
7 But they never were in the same section or unit; is
8 that right?

9 (The Defendant nods his head.)

10 BY MR. LUMUMBA: They were never at a place
11 where they could have that kind of contact. So I
12 think that for that reason, it would be more
13 prejudicial than probative. And secondly, if at
14 any point-- well, that is my first motion. That
15 should not be allowed because it would be more
16 prejudicial than probative. If you have ever been
17 to Parchman, they have a bunch of buildings, so
18 even in--

19 BY THE COURT: --Well, I am confident Mr.
20 Hollman at Parchman was not in the same place where
21 Mr. Flowers was.

22 BY MR. LUMUMBA: That's my understanding, not
23 in the same unit. Not in the same unit. You have
24 to be in the same unit to have any contact because
25 Mr.-- remember he is in, Mr., Mr. Flowers is on
26 death row, so he doesn't have contact with anybody
27 other than other people that may be in the same
28 unit on death row because they don't get yard
29 privileges and stuff like that.

1 **BY THE COURT:** Okay, y'all have me at a
2 disadvantage because y'all have got some idea where
3 this is going and I don't. Y'all have talked to
4 the man. What is your response to that?

5 BY MR. HORAN: I don't think it is going to be
6 necessary to get into that, Your Honor, but I would
7 like a few minutes to talk to Mr. Hollman before we
8 go forward. He just got here, I believe. Just 5
9 seconds.

10 **BY THE COURT:** Okay. Well, I'm going to let
11 you do that, but let me ask you; I have got this
12 question. (Pause) Well, okay, go ahead.

13 BY MR. HORAN: What is the question?

14 **BY THE COURT:** I don't know. I don't know
15 what y'all have told me yet.

16 (Mr. Horan left the courtroom, and after he
17 returned, proceedings continued with the JURY STILL
18 OUT as follows:)

19 BY MR. HORAN: Ready.

20 **BY THE COURT:** Let me see if I can phrase this
21 issue the way y'all are telling me. You do not
22 want-- your Motion in Limine is to have no, for him
23 to make no reference as to the both of them being
24 in Parchman. What is your response to that?

25 BY MR. HORAN: I don't really think I'm going
26 to get into that, Your Honor.

27 **BY THE COURT:** Okay, I think-- let me say
28 this. My opinion is it ought to be limited to
29 saying correctional facility or facility or

1 something like that. You are not at Parchman
2 awaiting trial. You are at Parchman after trial,
3 so I think you need to eliminate the Parchman
4 aspect of it, or I will just limit it to facility
5 or something like that.

6 BY MR. HORAN: I don't think I'm going to get
7 into it. I don't think it is going to be
8 necessary.

9 BY THE COURT: Okay. Is that who you want
10 next?

11 BY MR. LUMUMBA: Yeah, that was what I was
12 trying to get excluded. As long as he is not going
13 to get into it, we are in good shape.

14 BY THE COURT: Okay.

15 BY MR. HORAN: I do want to represent to the
16 Court that there is probably going to be an exhibit
17 with reference to a letter. I did tell him not to
18 mention trial because there is something in there
19 in the letter about the...

20 (Mr. Horan approaches bench to show the letter
21 to the Court.)

22 BY MR. HORAN: Let me point it out to you real
23 quick so you won't have to read all that mess.
24 Right here.

25 (Pause while Court reads).

26 BY MR. HORAN: I told him not to mention prior
27 trial.

28 BY THE COURT: Mr. Lumumba.

29 (Mr. Lumumba approaches the bench.)

1 **BY THE COURT:** Are y'all going to try to
2 introduce this?

3 **BY MR. HORAN:** I'm not going to try to
4 introduce it. I'm going to question him about the
5 contents of it though. He admitted to me that that
6 was a letter that he wrote to Mr. Lumumba's
7 office.

8 **BY THE COURT:** What about if we can't redact
9 that?

10 **BY MR. HORAN:** I'm not going to introduce it.

11 **BY THE COURT:** Okay.

12 **BY MR. HORAN:** I don't anticipate. If I do,
13 we will redact it.

14 **BY THE COURT:** It says, "I never thought
15 Curtis would be found guilty."

16 (Pause while Mr. Lumumba reads the letter.)

17 **BY MR. LUMUMBA:** We probably need to talk to
18 him to tell him not to mention--

19 **BY MR. HORAN:** --I told him about Parchman.

20 **BY MR. LUMUMBA:** --Parchman or trial.

21 **BY MR. HORAN:** I already mentioned Parchman.

22 **BY THE COURT:** Let me let him do it too, and
23 then I have got y'all both obligated; all right?

24 **BY MR. HORAN:** All right.

25 **BY THE COURT:** You want to go ahead and do
26 that while I'm looking at this?

27 **BY MR. HORAN:** Sanction both of us.

28 **BY THE COURT:** Yeah.

29 **BY MR. LUMUMBA:** My next witness, by the way,

1 is Jack, and the one after that is no-- Johnson.
2 This it's going to be--

3 BY MR. HORAN: --All right.

4 BY MR. LUMUMBA: No, that's why I asked you.

5 BY MR. EVANS: He is not calling him next?

6 (Mr. Lumumba left the courtroom. Upon his
7 return, there was the following:)

8 BY THE COURT: Okay, are we ready?

9 BY MR. LUMUMBA: Yes. The next witness will
10 be John Johnson.

11 BY THE COURT: Okay. Well, let's bring the
12 jury in.

13 (JURY ENTERS THE COURTROOM AT 11:03 A.M.)

14 BY MR. LUMUMBA: The Defense calls at this
15 time John Johnson.

16 BY THE COURT: All right, they have gone to
17 get him.

18 (Witness enters the courtroom.)

19 BY THE COURT: Mr. Johnson, you were sworn,
20 weren't you?

21 BY THE WITNESS: Yes, sir.

22 JOHN JOHNSON,
23 a white male called to testify as a witness by the Defendant,
24 having first been duly sworn, testified as follows, to-wit:

25 BY THE COURT: Have a seat right there, and
26 state your name for the record.

27 BY THE WITNESS: John Johnson.

28 BY THE COURT: You may proceed, Mr. Lumumba.

29 BY MR. LUMUMBA: Thank you, Judge. May we

1 approach just one second?

2 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
3 THE JURY AS FOLLOWS:)

4 BY MR. LUMUMBA: I am calling Mr. Johnson as
5 an adverse witness and ask--

6 BY THE COURT: Oh, I understand that.

7 BY MR. LUMUMBA: Okay.

8 BY MR. HORAN: I think the rule is changed.
9 It says you can't automatically identify them as
10 adverse witnesses.

11 BY THE COURT: No, you can't automatically do
12 it, but he is y'all's investigator, and I'm not
13 completely dumb.

14 END BENCH CONFERENCE

15 CROSS-EXAMINATION BY MR. LUMUMBA:

16 Q. Good morning, Mr. Johnson. Good morning.

17 A. Good morning, sir.

18 Q. Mr. Johnson, if I understand correctly, you had an
19 opportunity -- you actually work for the District Attorney's
20 Office; is that correct?

21 A. Correct.

22 Q. And you have had an opportunity to interview a
23 number of different witnesses in connection with this case.
24 Is that also correct?

25 A. True.

26 Q. And you have done a couple of photo lineups too,
27 haven't you, or at least one photo lineup?

28 A. I was a witness to two photo lineups.

29 Q. Okay. But you were present at the time these

1 lineups took place?

2 A. Three photo lineups.

3 Q. Okay, and you took notes on the photo lineups; is
4 that correct?

5 A. I did.

6 Q. Okay. Now you took notes on all the photo lineups
7 that you witnessed; is that correct?

8 A. Yes.

9 Q. Now, but before we get to that, I believe it would
10 be safe to say that at some point you talked to an individual
11 by the name of Ms. Hollman; is that correct?

12 A. I did.

13 Q. Okay, and Ms. Hollman was an individual who lived
14 in near vicinity of, lived in the near vicinity of Connie
15 Moore and where you understood that her boyfriend, Curtis
16 Flowers, stayed. Is that correct?

17 A. True.

18 Q. Okay, and Ms. Hollman, I think gave you a statement
19 and you took a statement from Ms. Hollman; is that correct?

20 A. I did.

21 Q. Would that have been taken on or about the 7th day
22 of August, 1996?

23 A. Close to that date, I think, if I could refer to
24 the--

25 Q. Okay, would it refresh your recollection if you
26 were able to see your notes?

27 A. Yes.

28 Q. Okay.

29 (STATEMENT OF PATRICIA HALLMON AND NOTES FROM

1 INTERVIEW OF 8/7/96 WERE MARKED AS DEFENDANT'S
2 EXHIBITS D-20 AND D-21 FOR IDENTIFICATION.)

3 BY MR. LUMUMBA:

4 Q. I am showing you just for identification purposes
5 what is marked as D-21 and D-20 and ask you if either one of
6 those two items would refresh your recollection as to about
7 the date that you talked to Patricia Hollman?

8 A. Yes.

9 Q. And what date would that have been?

10 A. August the 7th.

11 Q. Okay, and her name was Patricia or Pat Hollman; is
12 that correct?

13 A. Patricia Ann Hallmon.

14 Q. Okay, is that Hallmon with an H-A-L?

15 A. H A L L M O N is the way I spelled it.

16 Q. Okay, that's the way you spelled it. And that
17 was-- you talked to her 8-7-96. And it would be correct to
18 say that Ms. Hallmon told you that the person that she knew
19 as Curtis Flowers was wearing -- I want to reflect, if you
20 can recall, the apparel that she indicated that-- well, let
21 me strike that first. First of all, she said that she saw
22 Mr. Flowers around about 7:30. Is that correct?

23 A. Approximately, yes.

24 Q. Yeah, 7:30. Now and of course, you weren't present
25 when she testified, but in any event, you know that that's
26 what she told you; right?

27 A. Yes.

28 Q. Okay. Now would it also be correct to say that she
29 indicated to you that the person she saw who she was

1 suggesting to you was Mr. Flowers, that he had on a black
2 silky kind of pants. She indicated they were windbreaker
3 type?

4 A. Correct.

5 Q. Okay, black.

6 (Mr. Lumumba writes on big note pad on easel.)

7 Q. She saw him come go into his house and come out of
8 his house; right?

9 A. Yes.

10 Q. I think she said he stayed in the house about 20
11 minutes; right?

12 A. I think that's correct.

13 Q. Okay, so in any event, he was supposed to be
14 wearing these black silky-- and T-shirt. He had a T-shirt
15 on; right?

16 A. Uh.

17 Q. White T-shirt?

18 A. Correct.

19 Q. Didn't say anything about a black sweater; right?

20 A. No.

21 Q. Didn't say anything about any kind of jacket;
22 right?

23 A. I don't think so.

24 Q. Okay, white T-shirt. (Mr. Lumumba writes on
25 easel.) Okay, and you talked to, on a different date, on a
26 different time, you talked to a gentleman by the name of
27 BoJack; is that correct?

28 A. I did.

29 Q. That is just the nickname. His real name is

1 Kennedy; is that correct?

2 A. James Edward Kennedy.

3 Q. James Edward Kennedy. Okay, now-- before we get
4 into that, let me just make this kind of clear. Okay, so Ms.
5 Hollman was tes-- she was talking to you, and Ms. Hollman
6 indicated what time as you have already indicated. Did Ms.
7 Hollman, did she -- okay. She didn't indicate any particular
8 reason that she would have been looking at the Defendant's
9 feet, did she? She didn't say she was looking at the feet
10 for any particular reason, did she?

11 A. She indicated that she noticed he was wearing Fila
12 Grant Hill tennis shoes.

13 Q. She didn't indicate why she would be looking at his
14 feet, did she?

15 A. Why?

16 Q. Yes.

17 A. They live just real close to one another. I don't,
18 I don't-- I'm sorry. No, I--

19 Q. --I understand. But you have been, for instance,
20 you have been down here; we have been in court together for
21 the last week; right?

22 A. I have been in the witness room. I assume--

23 Q. --Well, we have passed each other in the hall
24 several times?

25 A. Yes.

26 Q. What kind of shoes I have on the first day?

27 A. I believe you had on some low quarter black shoes.

28 Q. Oh, really? What kind of--

29 A. That's what I think you had on. I wouldn't swear

1 to that.

2 Q. What kind of shoes did I have on the second day?

3 A. I don't know if I even saw you the second day.

4 Q. Well, what kind of shoes did I have on the third
5 day? You have seen me in the hall several times; right?

6 A. I have gotten glimpses of you, but I can't say what
7 you had on.

8 Q. Okay.

9 A. I really wasn't trying to watch you if you want to
10 know the truth.

11 Q. I understand. I understand. There is no reason to
12 watch me, and it wasn't anything unusual about seeing me;
13 right?

14 A. No.

15 Q. Okay. And certainly there was nothing unusual
16 about my feet; right?

17 A. Nothing to draw my attention.

18 Q. I guess the point I want to make is that you see
19 people all the time; is that right?

20 A. Sure.

21 Q. Okay, you see people you know all the time; right?

22 A. Uh-hum.

23 Q. You don't generally focus on their feet just
24 because you see people, do you? You?

25 A. Not unless there is something unusual.

26 Q. Okay. Okay, now let me ask you this. As far as
27 the other gentleman that you indicated you saw; you saw Mr.
28 BoJack and his name was Kennedy. Can you recall without
29 looking exactly what date you talked to him?

1 A. No, sir. I can't call the date without looking at
2 the statement.

3 Q. This gentleman here, I believe Mr. BoJack indicated
4 that he saw -- well, first of all, that interview didn't take
5 police until 9-17 of what year?

6 A. '96.

7 Q. Okay, that was 9-17 of '96. By the way, in this
8 particular case you are aware of the fact that there had been
9 a reward offered for information leading to somebody's arrest
10 and conviction; is that correct?

11 A. Yes.

12 Q. Okay. And you were aware of the fact that that had
13 been widely publicized; is that correct?

14 A. I don't know how much publicity, but I know it had
15 some.

16 Q. Well, it was in the newspaper; right? The Winona
17 Times?

18 A. Probably. I wouldn't swear to it.

19 Q. You know on posters; there were posters around the
20 city?

21 A. Yes.

22 Q. Okay, even probably on radio and TV; is that
23 correct?

24 A. I don't know.

25 Q. But you do remember talking to people about that;
26 right? That reward?

27 A. Yes. I have talked to people about the reward.

28 Q. For instance, you remember Latarsha Blissett? Do
29 you remember a conversation you had with her?

1 A. Yes, I remember a conversation with her.

2 Q. Do you remember telling Latarsha Blissett what she
3 could do with thirty thousand dollars?

4 A. No, I don't.

5 Q. You talked to her shortly after the incident
6 occurred, didn't you?

7 A. I don't remember the exact date. I think somewhere
8 around about a month or so after. I don't know exactly.

9 Q. It could have been less than a month?

10 A. It could have been.

11 Q. Okay, in any event you remember telling her that
12 you knew that Curtis Flowers did it. You remember telling
13 her that; right?

14 A. No. I don't remember that statement.

15 Q. You remember mentioning Curtis Flowers' name, don't
16 you?

17 A. Probably mentioned Curtis Flowers' name, yes.

18 Q. You mentioned Curtis Flowers' name a lot of times
19 when you talked to a lot of people; is that right?

20 A. Sure.

21 Q. In fact, it would be safe to say that you had
22 information indicating that Curtis Flowers had been employed
23 in the store; is that correct?

24 A. Yes.

25 Q. And that he had dropped some batteries; is that
26 correct?

27 A. Yes.

28 Q. Okay, but in any event you don't remember telling
29 Tasha Blissett that you know Curtis Flowers did it, and you

1 are trying to get some information from her about shoes or
2 something else about the incident and how good it would be to
3 have thirty thousand dollars or something of that nature?

4 A. I don't remember making any statement like that to
5 Latarsha Blissett, no.

6 Q. You don't remember; right?

7 A. No, I don't.

8 Q. Because you are not saying you didn't do it; you
9 are saying you don't remember doing it?

10 A. I can't swear that I didn't, but I don't believe I
11 did.

12 Q. Okay. But in any event, let me move on from
13 there. The second thing is that you-- would it be safe to
14 say that you talked to BoJack on the 17th of-- I think you
15 already told us 9-17-96, and Mr. BoJack told you that he had
16 seen Curtis Flowers at some point in time. And the time he
17 indicated that he had seen Curtis Flowers, I believe he gave
18 you a time of somewhere between about 7:15, didn't he?

19 A. Correct.

20 Q. About 7:15 A M; right?

21 A. Correct.

22 Q. And at the time he saw him, he had long white pants
23 on. Didn't he tell you that?

24 A. He said a black sweater and white pants.

25 Q. Okay.

26 A. Or he indicated a gray jersey T-shirt or short
27 sleeve shirt.

28 Q. Well, actually what happened-- let's go through
29 this a little bit. What he said when you asked the question,

1 he said a black sweater, and then first of all, he clearly
2 said white pants; right?

3 A. Correct.

4 Q. Okay, and he has testified here today or during the
5 course of this trial. In any event, he said he had a black
6 sweater on; is that right?

7 A. Repeat your question, please.

8 Q. He said in answer to your question of what he had
9 on, he said a black sweater. Didn't he say black sweater?
10 Isn't that what it says there?

11 A. Yes.

12 Q. Okay, and then I think you asked him another
13 question. You said didn't you tell me-- let me see. Your
14 question then implied that he had something else on. Your
15 question was--

16 A. Right there.

17 Q. It says, "What about his clothing? What kind of
18 clothing? Did you notice that?" And you said, "I believe he
19 had on a black sweater and white pants." That's what you
20 said; right-- I mean that's what he said; right?

21 A. That's what he said.

22 Q. Okay, and then you said that he had told you prior
23 to the taping that he had a gray jersey type T-shirt or short
24 sleeve shirt. That's what you said; right?

25 A. I said, "Just prior to the taping of this, you
26 indicated you thought it might have been a gray jersey type
27 T-shirt or short sleeve shirt."

28 Q. I see. Now that--

29 A. --and I asked was it -- excuse me.

1 Q. No, go right ahead.

2 A. I asked, "Was it gray or black?"

3 Q. And then he said, "Well, it may have been gray and
4 black;" right?

5 A. He said, "You know, a gray jersey then a little
6 black ink or whatever." I don't know what he meant by that.

7 Q. I see. But before you said that to him, he just
8 straight out told you a black shirt and white long-- well,
9 white pants; I'm sorry; right?

10 A. Yes.

11 Q. And that was without any prompting from you; is
12 that correct?

13 A. Correct.

14 Q. Okay. Now let me ask you this. Then you talked to
15 a person, at some point you talked to a person by the name of
16 Katherine Snow; is that correct?

17 A. That's correct.

18 Q. Do you have your notes from Ms. Snow?

19 A. I may have.

20 Q. And they may be here in evidence. (Pause while Mr.
21 Lumumba gets exhibits.)

22 Q. It would be safe to say that actually, and I am
23 showing you D-11-- I mean D-16; I'm sorry. And D-17, and if
24 you need, I am just giving it to you for purposes of
25 refreshing your recollection. If you need them to refresh
26 your recollection, I'm going to ask you to do so, but anyway
27 it would be safe to say that you talked to Ms. Snow on the--
28 you talked to her several times; is that correct?

29 A. Yes.

IN THE SUPREME COURT OF MISSISSIPPI

PAGES NUMBERED 2401-2558

VOLUME 27 of 30

EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 Q. Okay, and the first time you talked to her would
2 have been on the, actually 7-16-96; is that correct?

3 A. That's correct.

4 Q. And when you talked to her on 7-16-96, did she tell
5 you that she had seen Curtis Flowers anywhere?

6 A. No.

7 Q. Okay. You talked to her again as your notes
8 reflect; is that correct?

9 A. Yes.

10 Q. And you talked to her on 7-25-96; is that correct?

11 A. Correct.

12 Q. That is not the day or the day after, but that is
13 actually a week after. At least a week; right?

14 A. That's correct.

15 Q. Okay, on 7-25-96, which is at least seven or eight
16 or nine days after that night; is that correct, after the
17 night of the 16th?

18 A. Yes.

19 Q. Did she tell you at that time that the person that
20 she saw was supposed to be Curtis Flowers?

21 A. Not by name, no.

22 Q. Well, she never mentioned the name Curtis Flowers?

23 A. (Witness shakes his head.)

24 (Mr. Lumumba writes on pad on easel.)

25 Q. Now you have been an officer for quite a while; is
26 that correct?

27 A. Yes.

28 Q. I mean you actually right now you work for the DA's
29 Office, but you have plenty of experience investigating for

1 the DA; is that correct?

2 A. I have some, yes.

3 Q. How many years?

4 A. It will be eight years in January, I think.

5 Q. And you have had plenty of experience as an officer
6 before becoming part of the DA; is that correct?

7 A. Correct.

8 Q. Law enforcement experience, you say you have how
9 many years?

10 A. About twenty-five.

11 Q. And it would be safe to say as a law enforcement
12 officer, one of the things you learn right off is that it is
13 important to take notes; right?

14 A. Correct.

15 Q. It's important to take notes and to write down what
16 the people tell you. You don't make anything up. You write
17 down what they say; right?

18 A. That's correct.

19 Q. And it is important to get it as accurate as
20 possible what they tell you because you never know when you
21 are going to need this information; right?

22 A. That's correct.

23 Q. So you wouldn't write down something that they
24 didn't tell you because that might mislead you later on as to
25 what they said; right?

26 A. Correct.

27 Q. And you wouldn't write down-- and if they give you
28 some detail, you write that down particularly if it has to do
29 with an identification of an individual; is that correct?

1 A. Correct.

2 Q. Because if you are trying to find out who somebody
3 is, it's important to put down exactly what the person says;
4 isn't that true?

5 A. It's important to try to keep up with information,
6 yes.

7 Q. Okay. Now I believe that Ms. Snow-- so if she
8 would have told you that the person's name was Curtis
9 Flowers, then you would have wrote that down; right?

10 A. Yes.

11 Q. And she didn't tell you even though this was
12 7-25-96; isn't that correct?

13 A. That's correct.

14 Q. And in fact, so if she had any great revelations in
15 the middle of the night on the 16th about the person being
16 Curtis Flowers, she never told you that, did she?

17 A. She didn't give me his name that day, no.

18 Q. Did she give you the name Curtis Flowers?

19 A. No.

20 Q. Okay. And in fact-- can I see your notes for a
21 moment?

22 A. Sure.

23 (Pause while Mr. Lumumba looks at notes.)

24 Q. She never indicated to you that the person that she
25 saw was someone that she had seen before, did she?

26 A. Yes, she did.

27 Q. Is that down there?

28 A. No.

29 Q. Now let me see if I got this straight. You have

1 been doing law enforcement work for how long?

2 A. About 25 years.

3 Q. And you know that it is important to record exactly
4 what the witness tells you?

5 A. It is important to record, yes.

6 Q. Do you have in your notes anywhere where it says
7 that the person that she saw was somebody she had seen
8 before?

9 A. It may be in her statement. But I would have to
10 review it to see.

11 Q. Just take your time.

12 A. Okay. (Pause while witness looks at statement.) I
13 don't see anything to that effect.

14 Q. So nothing in the statement-- and you asked her in
15 the statement who the person was, didn't you?

16 A. I did. Well, I don't know that I did or not.
17 (Pause while witness looks at statement again.)

18 Q. You asked her to describe the person; right?

19 A. Yes.

20 Q. And she first said he was 5 foot 6. Isn't that
21 what she said?

22 A. That's correct.

23 Q. And then later on you asked her some other
24 questions saying didn't you tell me he was about 5 foot 10,
25 and then she said, oh, yeah, about 5 foot 10. Is that
26 right?

27 A. Repeat your question, please.

28 Q. In the statement-- not in the statement; I'm not
29 talking about the statement. I'm just trying to ask you if

1 you can recall. Didn't you, in fact, ask her during this
2 discussion if the person was, how tall the person is, and to
3 that question-- well, you just asked her to describe the
4 person; right?

5 A. Correct.

6 Q. And she said 5 foot 6; is that correct?

7 A. That's correct.

8 Q. And then you said, "Well, didn't you tell me prior
9 to this discussion that the person was 5 foot 10?" Is that
10 correct?

11 A. Yes.

12 Q. And then after that, she agreed to what you said,
13 but she had initially said 5 foot 6. Is that correct?

14 A. At this particular point, yes.

15 Q. I see. Okay, now in any event, well, you had never
16 told her before to say 5 foot 6, had you?

17 A. No.

18 Q. And you didn't tell her on this occasion to say 5
19 foot 6?

20 A. No.

21 Q. Okay. But now in that statement that you have
22 carefully reviewed, have you found any place where she
23 indicates that she knew the person who was in that lot that
24 day?

25 A. No.

26 Q. Have you found any place where she said the person
27 was Curtis Flowers?

28 A. No.

29 Q. Did you, in fact, see her again after that?

1 A. I have seen Katherine Snow before in the hospital
2 and other places. Now--

3 Q. Well, what I'm asking you-- let's go-- you have a
4 report of any -- you also saw her -- well, before I get to
5 that. She indicated that the person had no cap on; isn't
6 that correct?

7 A. (Pause while witness looks at notes. No response.)

8 Q. 7-25-96. She indicated no cap; is that correct?

9 A. (Pause while witness looks at exhibit.) Correct.

10 Q. And so she didn't tell you this person had a white
11 cap on. In fact, she told you he had no cap on; is that
12 correct?

13 A. Correct.

14 Q. She didn't tell you that the person had blue shorts
15 on. In fact, she didn't mention any kind of shorts that the
16 person had on. Isn't that correct?

17 A. That's true.

18 Q. She didn't even give you a description of any
19 clothing; isn't that correct?

20 A. That's true.

21 Q. And that is on either one of these things, all the
22 days we are talking about. That never occurred, did it?

23 A. True.

24 Q. And it is also true to say that this particular
25 witness never indicated to you that this person had on white
26 long pants or any kind of black sweater. Isn't that
27 correct?

28 A. True.

29 Q. Now let me say this to you, or let me ask you

1 this. By this, okay --- now the other thing that happened is
2 that you then saw Ms. Snow at a lineup; is that correct, or a
3 picture lineup? You actually didn't have a live lineup, but
4 you saw Ms. Snow at some point in time and had a picture
5 lineup. Is that correct?

6 A. Yes.

7 Q. And that picture lineup occurred-- when did that
8 occur? Tell the ladies and gentlemen of the jury if you
9 could tell them, please.

10 A. On August 19th.

11 Q. Okay, now this is an incident that actually
12 occurred, this incident actually occurred back in July the
13 16th of 1996. Is that correct?

14 A. True.

15 Q. And you didn't show her a lineup until August of
16 1996, actually over a month later; isn't that correct?

17 A. Correct.

18 Q. Okay, now let me ask you this. You have had some
19 experience in preparation for lineups before, have you not?

20 A. Some.

21 Q. Okay, and you have been an officer for a long
22 time. That is one of the investigative tools you use;
23 right?

24 A. Correct.

25 Q. And you understand that that is an investigative
26 tool which has to be carefully used. You understand that;
27 right?

28 A. Yes.

29 Q. Okay, and there are some kinds of things you do in

1 order to make sure that the lineup is fair. It's not biased
2 or prejudicial; is that true?

3 A. True.

4 Q. And one of those things is that when you do a
5 lineup, you try to make sure you understand that people are
6 normal people; their memories fade. Isn't that true? After,
7 over a period of time?

8 A. It can.

9 Q. Yeah, well, the longer the time, the more chance is
10 that the memory will fade; right?

11 A. With some people, yes.

12 Q. And the longer the time, the more chance that other
13 things will come in and perhaps confuse the witness; right?

14 A. (No immediate response.)

15 Q. The more opportunity for confusion; right?

16 A. For some people, yes.

17 Q. The more opportunity for them to get mixed up or
18 forget what they saw or to think they saw something they
19 didn't saw. The longer you wait, the longer that is a
20 possibility. You have learned that in your law enforcement
21 classes; right?

22 A. That is possible, yes.

23 Q. And in fact, don't they tell you in law enforcement
24 class you should give the lineup, if you have one, give it
25 right away; right?

26 A. Not necessarily.

27 Q. Or give it as soon as you possibly can; right?

28 A. As soon as it's available, yes.

29 Q. Well, which is as soon as you possibly can; right?

1 A. Basically, yes.

2 Q. Okay. Now and there are other things that they
3 say. They use principles like make sure when you use
4 pictures, don't use pictures which are suggestive; right?

5 A. You avoid that, yes.

6 Q. Okay, what I mean by that is that you try to make
7 sure that when you are showing a person a lineup, that the
8 pictures, that no picture stands out for any particular
9 reason; isn't that right?

10 A. You try to avoid that, yes.

11 Q. And in fact, I notice that you did two lineups; one
12 with Ms. Snow, one with Mr. Porky Collins. And actually both
13 of them were done over a month after the incident; isn't that
14 true?

15 A. True.

16 Q. Now but in any event, and you didn't use the same
17 pictures with Mr. Collins you used with Mr. Snow?

18 A. No.

19 Q. Excuse me; Mr. Collins that you used with Ms. Snow;
20 isn't that true?

21 A. I think that's correct.

22 Q. Okay, but in any event, you don't supposed to use,
23 you know, when you talk about lineups, you have got to make
24 sure that all the people that is in the lineups have similar
25 characteristics. That is one of the principles that you try
26 to use; right?

27 A. (No response.)

28 Q. Pardon?

29 A. Would you repeat that question, please.

1 Q. When you do a lineup, you try to make sure that the
2 people in the lineup, the picture lineup have similar
3 characteristics. Isn't that true?

4 A. I think you try to, basically try to avoid
5 outstanding characteristics that will stand out on some, yes.

6 Q. Yes, I understand. Or you try to avoid a picture
7 that stands out different from the rest of the pictures;
8 right?

9 A. You try to do that, yes.

10 Q. Okay, and that is what we mean by trying to get
11 people in there with similar characteristics; isn't that
12 true?

13 A. Repeat the question again, please.

14 Q. That's what we mean by trying to get people with
15 similar characteristics. When we talk about characteristics,
16 we talk about things like skin complexion could be a
17 characteristic; right?

18 A. It could be, yes.

19 Q. Okay, and hair style could be a characteristic;
20 right?

21 A. Hair style is a characteristic. Now I don't know
22 if I am following your questioning.

23 Q. Well, you try to get people with similar hair
24 styles. That is one of the things you want to do?

25 A. I don't know that you necessarily try to get
26 similar hair styles. I mean people comb their hair
27 different. You try to get photographs that don't stand out
28 with specific characteristics over other people.

29 Q. For instance, you wouldn't want to put, just to use

1 the classic example, you wouldn't put an individual in a
2 photograph where the individual, where he is supposed to be
3 looking for a dark skinned person, and the other individuals
4 in the lineup except for the suspect all are light skinned.
5 You wouldn't do that; right?

6 A. You would try to avoid that.

7 Q. Try avoid that. So you don't want to put light
8 skinned people in the lineup with dark people. You try to
9 avoid that; right?

10 A. You try to avoid that.

11 Q. Okay, and in fact, you try to avoid anything that
12 sticks out, like one person, putting a person in the lineup
13 where his head looks two or three times the size of
14 everybody else in the lineup. You wouldn't want to do that,
15 would you?

16 A. I don't think you would want that, no.

17 Q. Okay, but just by the way, looking at this lineup
18 that you showed Porky Collins, jumping ahead one moment,
19 S-91, and this is the lineup that was given on some time even
20 after Katherine Snow's lineup. Isn't that correct? You gave
21 his after you gave Katherine Snow's; is that correct?

22 A. I'm sorry. Would you repeat your question.

23 Q. Porky Collins lineup came after Katherine Snow's
24 lineup. Isn't that true?

25 A. Porky's lineup was on 8-24-96.

26 Q. And Katherine Snow was on 8-19-96; correct?

27 A. Correct.

28 Q. So this lineup here is the one you showed him; is
29 that correct?

1 A. Yes.

2 Q. And it would be safe to say that in both lineups
3 the Defendant was number 4; isn't that correct?

4 A. I would have to look at the other lineup to say
5 that.

6 Q. In both lineups the Defendant was number 4; right?

7 A. (Pause) I don't know that this one has a number.

8 Q. If it goes this way, 1, 2, 3, 4; is that correct?

9 A. If it goes this way, yes.

10 Q. Okay, is there another way that it possibly could
11 go?

12 A. It could go from here and around or any way you
13 want to, I guess.

14 Q. You don't know what number this is?

15 A. No, if that's-- well--

16 Q. --It's actually in the same position as the one
17 that is in the Porky Collins lineup; isn't that correct?

18 A. That's true.

19 Q. Okay, but in any event, in the Porky Collins lineup
20 I notice that it would be safe to say that as the Defendant
21 is concerned, his head is bigger than the person in number
22 1. Isn't that true, at least the way it's depicted in the
23 photograph?

24 A. I can't say with the distance that this photograph
25 was taken from this individual or this one.

26 Q. From the way that it's depicted in the photograph,
27 it appears in the photograph that you showed them -- I'm not
28 asking you what is true in real life. I am asking you in the
29 photograph that you showed the person looking at this

1 photograph, it appears that picture number 4 has a much
2 bigger head than number 1. Isn't that true?

3 A. I can see some difference in the size of the space
4 that this head takes up on this lineup over this one.

5 Q. And that would be the same thing is true of number
6 2, number 3, number 5, and number 6. Isn't that true?

7 A. Yes.

8 Q. It would also be safe to say that as far as number
9 5 is concerned, his hair style is completely different; isn't
10 that correct, than number 4?

11 A. His hair style is different, yes, that you can see.

12 Q. Would it also be safe to say that number 1 has much
13 more and number 3-- excuse me, strike that. Number 3's hair
14 style is quite different than number 4?

15 A. He has a little more hair than number 4.

16 Q. Would it also be safe to say that the hair style is
17 different, or maybe you don't know, but I am just asking you?

18 A. I'm not familiar with the style; I'm sorry.

19 Q. Since we are talking about the amount of hair, it
20 would be safe to say that number 1 has a lot more hair than
21 number 4 also; right?

22 A. He has more hair than--

23 Q. --Now there is a lot of people in the world that
24 have hair similar to number 4. In other words, what I'm
25 saying is that a lot of people wear their hair close, closely
26 shaven; isn't that correct?

27 A. Yes.

28 Q. In fact, that is really a style amongst young black
29 men; isn't that true?

1 A. I would assume so.

2 Q. I mean you see a lot of young man black men from
3 time to time walking the street and in and out of the store
4 and up and down Winona, don't you?

5 A. Sure.

6 Q. And a lot of them wear their hair short style?

7 A. Yes.

8 Q. But number 3 doesn't, and number 5 doesn't, and
9 number 1 doesn't in this lineup that you put Curtis Flowers
10 in. Isn't that true?

11 A. I would say that number 1's hair is short. Number
12 6--

13 Q. --Is it as short as Mr. Flowers?

14 A. No, I don't think it is quite as short as Mr.
15 Flowers--

16 Q. Before you answer--

17 BY MR. EVANS: --Your Honor, may the witness
18 be allowed to finish answering?

19 BY MR. LUMUMBA: Well, Judge--

20 BY MR. EVANS: --May the witness be allowed to
21 finish his answer, Your Honor?

22 BY MR. LUMUMBA: Excuse me. Yes, he may,
23 Judge. All I am asking is that he answer my
24 question first, and then he can explain anything he
25 wants. My question is--

26 BY MR. EVANS: --Which he has done and I would
27 ask that he be allowed to finish answering--

28 BY THE COURT: --I'm going to let him finish.

29 BY MR. LUMUMBA: Okay, Judge, I asked the

1 question specific to 1, 5 and 3. Then I don't have
2 any problem if he says anything about anything
3 else.

4 **BY THE COURT:** Okay, well, he was answering
5 that, and you cut him off. So let him answer.

6 BY MR. LUMUMBA:

7 Q. As to 1, 5 and 3, is it not true that they have
8 more hair clearly on their picture than Mr. Flowers does?

9 A. The angle, position of it would reflect that, yes.

10 Q. Okay, now you want to talk about number 2 and
11 number 6. What do you want to say about them?

12 A. I would--

13 Q. --Were you trying to say that they also have short
14 hair?

15 A. Yes.

16 Q. Was that the question. They have short hair.
17 Sure, they do. But number 6 and number 2, their head is
18 clearly smaller than number 4 in this picture display. Isn't
19 that true?

20 A. The head on this picture takes up more space, a
21 little more space here than 2 or 6.

22 BY MR. LUMUMBA: I'm going to pass this to the
23 jury, please.

24 (State's Exhibit S-91 was passed to the jury.)

25 BY MR. LUMUMBA:

26 Q. Now I'm going to ask you this question one more
27 time as the jury is looking at this picture, and you can give
28 me whatever answer you want. Is it not true that the head on
29 number 4 sticks out as being much bigger than the head on any

1 one of those other individuals in that photo display? Now
2 I'm not asking you what may be the truth in real life because
3 we don't know. We don't know how well the pictures were
4 taken, do we?

5 A. I don't know that. No, I don't.

6 Q. You don't. And the person looking at the
7 photographs, they don't know that either, do they?

8 A. True.

9 Q. And they have no reason to be speculating about
10 that. All they are doing is looking at what they see;
11 right?

12 A. True.

13 Q. And you have already told me that the procedures
14 that you are supposed to use is to make sure that nobody
15 sticks out for any reason; right?

16 A. That's your ideal.

17 Q. You can't always do it. That's what you are going
18 to tell me; right?

19 A. Yes, sir.

20 Q. Sometimes you don't have the photographs available
21 to do the kind of job you want to do; is that right?

22 A. That's true.

23 Q. But that is still the objective; isn't that right?

24 A. That is the objective.

25 Q. And they have that objective for a reason because
26 they don't want somebody to just come in and pick out a
27 photograph because they have the biggest head, because that's
28 what focuses in; that's what makes them concentrate on the
29 photograph. They want somebody to pick out the photograph

1 with all the heads the same, and they want them to pick it
2 out because it's the individual, if that is possible; right?
3 That's why you have that rule?

4 A. An effort is made in that direction, yes.

5 Q. Now and you knew when you were showing this
6 photograph to Mr. Porky Collins that he had told you that all
7 he had gotten was a split second glance at anybody that he
8 was trying to identify; isn't that correct?

9 A. Mr. Collins, the way I remember his statement to
10 me, was that he drove down Front Street, looked to the left
11 and saw two men talking. After he turned at the south end of
12 Front Street and went back north, we got a glimpse of him
13 going in the store.

14 Q. Split -- no, going in the store?

15 A. Going toward the store; I'm sorry.

16 Q. Actually, if you looked at what he said carefully,
17 what he said is that the man turned north; right?

18 A. I understood him to say that he turned toward the
19 store.

20 Q. Did you look close enough to see that his statement
21 says the man turns north. You don't remember that? I am
22 just asking you if you remember?

23 A. I am testifying as to what I remember him saying.

24 Q. But whatever he said, you wrote that down; right?

25 A. I tried to write. I made short notes of what he
26 said on the 16th.

27 Q. Well, in fact, you recorded a statement from him on
28 the 24th of August also; isn't that correct? You recorded a
29 statement?

1 A. Probably that date. I don't remember exactly.

2 (Mr. Lumumba gets Exhibit D-8 and hands to
3 witness.)

4 Q. I am asking you to look at statement of Porky
5 Collins and see if that refreshes your memory as to which
6 direction Mr. Collins said the man walked in as he was
7 walking away from Mr. Collins? In fact, which direction both
8 of them walked?

9 A. It says the one in the front of the car turned to
10 the north headed across the street. The other one closed the
11 door and headed that way.

12 Q. The one that was, the first one it indicates turned
13 and headed north. Isn't that what it says?

14 A. Yes.

15 Q. And the other one?

16 A. --but it also says he headed across the street, and
17 if you are familiar with the street, I don't know that that
18 is going to be north.

19 Q. Well, let me ask you this.

20 A. The street runs north and south.

21 Q. The street runs north and south, right, and if you
22 are going across the street, you can walk northwest; isn't
23 that true?

24 A. That is possible; yes, sir.

25 Q. You can walk northwest; right? Well, he said
26 north. That's what he said; right?

27 A. But you can't walk across the street if you walk
28 due north.

29 Q. Well, you don't know any reason why Porky Collins

1 would have testified in the evidentiary hearing that he
2 walked away from Tardy's, do no?

3 A. No.

4 BY MR. EVANS: Your Honor, that is not what he
5 testified to, and I object to a misleading
6 statement.

7 BY THE COURT: I don't think it is either.

8 BY MR. LUMUMBA: Can we approach, Judge?

9 BY THE COURT: Uh-hum.

10 BY MR. LUMUMBA: Give me the transcript.

11 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
12 THE JURY AS FOLLOWS:)

13 BY THE COURT: It may be in there, but it
14 wasn't in what he testified to earlier.

15 BY MR. LUMUMBA: No, I impeached him with
16 this, Judge. I impeached Collins with this.

17 BY THE COURT: I'm talking about what he
18 testified in this trial.

19 BY MR. EVANS: What he testified to on direct
20 and on-- (Both Counsel talking at the same time.)

21 BY MR. LUMUMBA: --on direct-- excuse me,
22 excuse me. On direct examination Porky Collins
23 said that he walked toward the store. I impeached
24 him with a statement that specifically says, "But
25 actually walking away from Tardy's; right."
26 Answer, "That's correct."

27 BY MR. HORAN: The doesn't mean he wasn't
28 walking across the street.

29 BY MR. EVANS: He clearly testified that he

1 turned north and walked across the street.

2 BY MR. HORAN: You can't ask this witness
3 about that anyway.

4 BY THE COURT: That's right. It's not-- you
5 can't ask that. That is--

6 BY MR. LUMUMBA: --That is a different
7 objection. The objection that I asked you to
8 correct yourself by saying he didn't testify to
9 that because he definitely testified in this trial
10 that he made this statement at the--

11 BY THE COURT: --well, he may have done that.
12 I didn't say he did that--

13 BY MR. EVANS: That is not what he said he did
14 in this trial.

15 BY MR. LUMUMBA: Well, excuse me. Judge, what
16 I am saying is my question to him was, "You don't
17 know any reason why at the evidentiary hearing he
18 testified that he walked away from Tardy's; right?"
19 and your indication and "That's correct." And you
20 have told this jury that he didn't say that. He
21 did say that, and he was impeached with that in
22 this trial. I mean--

23 BY MR. HORAN: --impeached with that in the
24 trial.

25 BY MR. EVANS: He asked him to testify to
26 about the hearing--

27 BY THE COURT: --That's right. I think that's
28 what I said.

29 BY MR. LUMUMBA: Well, my objection stands.

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END BENCH CONFERENCE

BY MR. LUMUMBA:

Q. If Mr. Collins were asked if he was "actually walking away from Tardy's; right?" and he said, "That's correct," you don't know why he would have said that, do you?

A. I have no idea why he would have said that.

Q. Now let me ask you this. Can I see that for a moment, please?

A. Sure.

(Statement handed to Mr. Lumumba.)

Q. Coast to Coast would have been across the street from where he told you he was; right?

A. That would have been northwest.

Q. Okay. So if he walked, if he headed north and walked across the street, that would have been consistent with heading toward Coast to Coast or maybe even farther up the street; right?

A. If he walked north and then he turned west, it would be consistent with that or either headed northwest.

Q. If he crossed the street and walked north, that would be consistent with heading toward Coast to Coast. Isn't that true?

A. Repeat your question, please. I'm sorry; you are losing me.

Q. If he walked across the street and went in a northerly direction, that would be consistent with going toward Coast to Coast. Isn't that true?

A. Yes.

1 Q. Can you show me anywhere in this statement taken on
2 May 10, 1997, where he said he headed toward Tardy's?

3 A. (Pause) He said, "I never seen his face,"..."I
4 seen was more or less from the back of him, every time I seen
5 him. The other one pushed the door to and they headed to the
6 other side of the street."

7 Q. Excuse me. Where do you see that? And is Coast to
8 Coast on the other side of the street?

9 A. It would be on the other side of the street than
10 north.

11 Q. Yeah, but he never testified, did he, or he never
12 told you that these people were parked right in front of
13 Tardy's, did he? In fact, he told you that they were parked
14 north of Tardy's at least by what I call the alley, the
15 little small street there. He told you that, didn't he?

16 A. My memory was a little below that.

17 Q. Even a little below that wouldn't have been in
18 front of Tardy's. That would have been in front of a vacant
19 building. Isn't that true?

20 A. It depends on how much, where you are talking about
21 there.

22 Q. What I was asking you, and this will be my question
23 on this issue. You find me one, any place in there where it
24 says he headed toward Tardy's or where it says he headed
25 south, or where it says that he was parked directly in front
26 of Tardy's. Find me that anywhere. (Pause) And if you see
27 any language about them heading north, let us know because we
28 would be interested in that too.

29 A. It says the one on the north, "The one on the front

1 of the car made a turn to the north." (Pause).

2 Q. So what I assume that you have not found the spot
3 in that statement anywhere where it says he headed toward
4 Tardy's?

5 A. I don't see it worded in that fashion, no.

6 Q. What you do see is where it says on two different
7 spots, one you just shared with us and one I shared with you
8 earlier where it says the person headed to the north. Isn't
9 that correct?

10 A. Correct.

11 Q. And crossed the street. It says both, headed to
12 the north and crossed the street?

13 A. Yes.

14 Q. Now if I told you two things, that a), that I was
15 going across the street which actually would be heading
16 toward the west and that the person headed north; then you
17 could very well assume, wouldn't you, that the person was
18 headed northwest across the street to the north; right?

19 A. You could assume that.

20 Q. Unless you just wanted to say that they were going
21 south toward Tardy's even though the person said nothing
22 about south. Said nothing about south, said nothing about
23 Tardy's; isn't that correct?

24 A. That's true.

25 Q. And as long as we are talking about him, his
26 statement was taken on March the 10th, 1997; isn't that
27 correct?

28 A. I think that's correct.

29 Q. This is almost, that is working on almost a year

1 after the incident; isn't that correct?

2 A. Can I review that?

3 (Exhibit handed back to the witness.)

4 Q. Well--

5 A. --that's correct.

6 Q. Okay, the reward had been out for quite some time;
7 is that right?

8 A. The reward had been out at that time.

9 Q. Now Winona is a fairly small town, isn't it, Mr.
10 Johnson?

11 A. That's correct.

12 Q. And word gets around Winona pretty quickly about
13 different things, doesn't it?

14 A. Sometimes.

15 Q. And if you are talking to people and everybody you
16 are talking to, you are asking them about Curtis Flowers,
17 that word probably gets around pretty quickly too, doesn't
18 it? That that's who you are asking about?

19 A. I didn't go out just asking about Curtis Flowers.

20 Q. But just about everybody you talked to you asked
21 them something about Curtis Flowers, didn't you?

22 A. The people--

23 Q. --what kind of shoes he wore or if they saw him
24 that day. You asked about Curtis Flowers, didn't you?

25 A. A lot of the witnesses I talked to we discussed
26 Curtis Flowers. But I let, I didn't lead them into the
27 conversation to name Curtis Flowers in anything.

28 Q. I see. I know you wouldn't just tell them to name
29 Curtis Flowers like you didn't tell Ms. Blissett that you

1 knew that Curtis Flowers did it. At least you don't remember
2 telling her that?

3 A. I sure don't.

4 Q. We had a magic marker here at one point in time.
5 It seems to be missing, probably because I have got it in
6 my pocket. See how people accuse people of stuff? Okay.
7 But in any event, this is Mr. Collins. Now you initially
8 talked to him on the-- the first time you talked to Mr.
9 Collins actually would have been back on 7-16-96. Is that
10 correct?

11 A. That's true.

12 Q. But you didn't take a statement from him at that
13 time, a taped statement; right?

14 A. No.

15 Q. The taped statement was, was not actually taken
16 until, I think we just looked at it, March of 1997; is that
17 correct?

18 A. March '97.

19 Q. March '97, and that would have been March what?

20 A. 10th.

21 Q. And it would be safe to say that when he talked to
22 you on the 16th of '96, he actually told you that the, that
23 he saw two black men, and he said they had a medium
24 complexion; is that right?

25 A. I believe that's correct, but I would want to refer
26 to my notes to say that.

27 Q. Do you have them there?

28 A. No.

29 Q. Okay. I'm not trying to introduce this. You just

1 need this to refresh your recollection; right?

2 A. True.

3 Q. Okay, I'm just showing you what purports to be your
4 notes. Do those appear to be your notes?

5 A. That's correct.

6 Q. And does it indicate that the two black men had
7 medium complexion?

8 A. That's correct.

9 Q. In he would have said dark complexion, you wouldn't
10 have wrote down medium complexion, would you?

11 A. That's true.

12 Q. And in fact, if he would have said he looked like
13 his complexion was like Mr. Hargrove -- Hargrove, you know,
14 is police chief; right?

15 A. He is.

16 Q. And he may even be darker than Mr. Flowers; isn't
17 that true?

18 A. Probably.

19 Q. And so both him and Mr. Flowers are fairly dark
20 skinned black men, aren't they?

21 A. Hargrove is darker than.

22 Q. Well, both of them would be considered of dark
23 skin; is that correct? I mean if you look at the whole range
24 of things. You see my complexion; right?

25 A. Yeah.

26 Q. It is certainly much darker than me; right?

27 A. Yes.

28 Q. And you see Mr. Freelon's complexion. It is
29 certainly much darker than him; right?

1 A. He is darker than Mr. Freelon.

2 Q. Right, and then you see Ms. Flowers out there. You
3 know Ms. Flowers?

4 A. Right.

5 Q. She has got kind of a medium complexion. There are
6 several people out there got medium complexions, much
7 lighter, much-- yet darker than me, still--

8 BY MR. EVANS: --There is absolutely no
9 relevance to this. I object to him just continuing
10 to go drag things out. He can ask him about what
11 the statement said, and that's it.

12 BY THE COURT: That's right. You are limited
13 to that. I think you have made your point on that
14 anyway.

15 BY MR. LUMUMBA: Okay, thank you.

16 BY MR. LUMUMBA:

17 Q. In any event, he said it was-- he didn't say, you
18 don't have anything down there about the person looking like
19 Mr. Hargrove, do you?

20 A. No.

21 Q. And you would not -- now I just want your honest
22 opinion. You would not consider Hargrove as a medium skin
23 complexion black man, now would you?

24 A. I wouldn't.

25 (Mr. Lumumba writes on pad on easel.)

26 Q. So on 7-16-96 you said he saw two medium skin black
27 men, and turned toward the north and walked across the
28 street; is that correct?

29 A. In my notes on that day I put down that, last seen

1 walking toward Tardy's.

2 Q. But you don't have any statement directly from him
3 recorded where it says anything about toward Tardy's, do you?

4 A. I didn't record any statement that day.

5 Q. Now it would be 7-- 3-10-97 is where it says the
6 man turned towards the north and walked across the street; is
7 that correct?

8 A. Yes.

9 Q. And actually, he told you and consistent with his
10 testimony that actually-- oh, you don't remember him saying
11 that the person was parked either in front of Coast to Coast
12 or in front of the alley? You don't remember that; right?

13 A. No. I didn't remember him being parked in front of
14 Coast to Coast.

15 Q. But if he came in here and told that jury that, you
16 wouldn't call him a liar, would you?

17 A. No, I wouldn't.

18 Q. Now let me ask you this. If you are north of
19 something and you go north, then that puts you further
20 north. Isn't that true?

21 A. Yes.

22 Q. Okay. Now this person, Mr. Collins indicated the
23 two people he saw had a car or were standing at a car; right?

24 A. Yes. Standing near a car.

25 Q. A brown car?

26 A. I believe that's right.

27 (Mr. Lumumba writes on pad on easel.)

28 **BY THE COURT:** Mr. Lumumba, are we at a point
29 where we can take a break?

1 BY MR. LUMUMBA: Okay. Can I ask one more
2 question?

3 BY THE COURT: Sure.

4 BY MR. LUMUMBA:

5 Q. By the way, did you notice that Mr. Collins told
6 you that he went home and changed his shoes?

7 A. I don't remember that specifically.

8 Q. Well, let me ask you this.

9 (Looks at Collins' statements and points out
10 portion of it for the witness.)

11 Q. That when he went home after being in the Tardy
12 area, that he actually changed his shoes. Did you see
13 that?

14 A. Yes.

15 Q. Now did you ever ask him to bring the shoes that he
16 took off after leaving the Tardy area back to see if possibly
17 he may have went in the store and left some prints?

18 A. No, I did not.

19 BY MR. LUMUMBA: I can break at this point.

20 BY THE COURT: Okay. Ladies and gentlemen, we
21 are going to take your lunch break because they are
22 expecting y'all. We will start back with about
23 1:15.

24 (FOLLOWING THE NOON RECESS ON MARCH 29, 1999,
25 TRIAL RESUMED IN OPEN COURT AT 1:19 PM WITH THE
26 COURT, ALL COUNSEL, THE DEFENDANT, AND THE JURY ALL
27 PRESENT AND WITH MR. JOHN JOHNSON STILL ON THE
28 WITNESS STAND:)

29 BY THE COURT: All right.

1 CONTINUED CROSS-EXAMINATION BY MR. LUMUMBA:

2 Q. Okay, Mr. Johnson, good afternoon.

3 A. Good afternoon.

4 Q. Mr. Johnson, would it be safe to say that when you
5 interviewed Mr. Collins on the 24th is when you actually
6 showed him the pictures that are displayed here in S-91, the
7 ones in which I have asked you if number 4 has a head much
8 bigger than everybody else?

9 A. That's true.

10 Q. Now let me ask you this. You also showed him
11 another photographic display on that same day; is that true?

12 A. Yes.

13 Q. Okay. And this is it here. This is D-19. This is
14 marked for identification purposes; is that correct? Well,
15 you don't know. But I will state for the record-- I'm sorry;
16 it's not D-19. It's D-10. I must have been looking at
17 something else, D-10. I am asking you did you show him that
18 on the 24th also?

19 BY THE COURT: Is it marked for identification
20 or--

21 BY MR. LUMUMBA: It's actually for
22 identification, Judge. It appears to be.

23 BY THE WITNESS:

24 A. It was shown to him.

25 Q. And actually this was shown prior to the time that
26 the other lineup was shown to him; is that correct?

27 A. Yes. I think that's correct.

28 Q. Okay, and in this lineup, you have Mr. Doyle
29 Simpson in that lineup; is that correct?

1 A. That's true.

2 Q. And it would be safe to say that in that
3 particular lineup he actually, he indicated he didn't make a
4 positive identification of anybody in that lineup. Is that
5 correct?

6 A. True.

7 Q. But he also indicated in that lineup that 1 and 3
8 resembled the person, but the hairline was further back. Is
9 that correct?

10 A. That's the way I remember it, yes.

11 Q. Pardon?

12 A. If I can refer to my notes, I think that's correct.

13 Q. Okay.

14 (Notes handed to witness.)

15 Q. Said 1 and 3 resemble him, but the hairline was
16 further back; is that correct?

17 A. Correct.

18 Q. And that is on this lineup that Mr. Simpson was in;
19 is that correct?

20 A. Correct.

21 Q. Now Mr. Simpson is not 1 or 3, is he?

22 A. No.

23 Q. But then he pointed to number 6 which is Mr.
24 Simpson; is that correct?

25 A. He did.

26 Q. And even though, and he did, in fact, say as to Mr.
27 Simpson, did he not, he pointed to Simpson and said the hair
28 was like this, saying that Mr. Simpson's hair was like that.
29 Is that correct?

1 A. He said his hair, "hairline like this."

2 Q. "May have appeared"--

3 A. --"appeared to be a little darker."

4 Q. "But it looks like him;" is that correct?

5 A. "But it looks like him."

6 Q. Face is the same shape and all that kind of stuff?

7 A. "Round like this."

8 Q. Okay. And you put down "unable to be positive."

9 Is that correct?

10 A. Correct.

11 Q. Okay. Now actually, when-- you didn't ask him if
12 he knew Doyle Simpson, did you?

13 A. No.

14 Q. Okay, and then in the other lineup, the one you
15 showed him right after that, that's the one where he pointed
16 to the person who is Mr. Flowers, who I asked you if the head
17 looked a little bigger; is that right?

18 A. That's true.

19 Q. And he said, pointed to Curtis Flowers. "I think
20 that's him." That's what he said; right?

21 A. Yes.

22 Q. He said, "He is about my height." Is that correct?

23 A. Yes.

24 Q. He indicated he is 5'10"; right?

25 A. Correct.

26 Q. Said, "The complexion is also right." That's what
27 he said at that time?

28 A. Correct.

29 Q. "I believe this is him. It looks like him." Is

1 that right?

2 A. Yes.

3 Q. Then you asked him a question, did he know Curtis
4 Flowers; is that correct?

5 A. I did.

6 Q. And this is after you had been investigating and
7 asking people about Curtis Flowers for some time; is that
8 correct? Not necessarily him, but you have been asking
9 people about Curtis Flowers; is that right?

10 A. I didn't go out in the community just asking the
11 people about Curtis Flowers.

12 Q. Okay, but did you ask some people you talked to
13 about Curtis Flowers?

14 A. Yes.

15 Q. Okay. In any event, at any point he says, "This is
16 the man that I saw out there that day." Is that correct?

17 A. I asked him the question. He said, "No, but I know
18 the person I just identified is the person I saw in front of
19 Tardy's July the 16th, '96."

20 Q. Okay. And that was on the same day that he had
21 pointed to two people in the, two people in the Simpson
22 lineup and said it resembled the man; right?

23 A. Some similarity, yes.

24 Q. And he had pointed to Simpson and said that he
25 looked like the man; right?

26 A. Yes, said, "I believe that's him. It looks like
27 him"-- no. On that one he said--

28 Q. "But it looks like him"?

29 A. "Hairline like this. May have appeared a little

1 darker, but it looks like him. The face was also the same
2 shape, round like this. Unable to be positive."

3 Q. Okay, and so on that same day then you show him Mr.
4 Flowers, and so after he has already pointed to three other
5 people and said certain things about them that you have
6 already shared with the jury what he said; right?

7 A. Correct.

8 Q. That's the day, then you showed him Mr. Flowers,
9 and he starts off by saying, "I think that's him;" right?
10 Or that's the first thing he said; right?

11 A. Yes.

12 Q. Okay, but anyway, and that was the man you pointed
13 to like you said, with a slightly bigger-- well, with
14 whatever the picture shows about his head. Is that correct?

15 A. Yes.

16 Q. And this was also, and you understood at the time
17 that you were showing him these pictures that he had only
18 reported ever seeing this person, only reported seeing the
19 face of one individual out there that day. Isn't that true?

20 A. That he only got a good facial view of one of the
21 suspects, yes.

22 Q. Well, in fact, he said that he didn't get a facial
23 view of the other one period. Didn't he say that?

24 A. I'm not sure what his statement said.

25 Q. Well, his statements should stand for themselves,
26 but the second thing is that he said that he got a split
27 second glance. Isn't that what he said?

28 A. I don't think he used that term when he talked to
29 me.

1 **BY THE COURT:** You need to speak up, Mr.
2 Johnson, so they can hear you.

3 **BY THE WITNESS:** Yes, sir.

4 **BY MR. LUMUMBA:**

5 Q. Just so we won't waste a lot of time, I will direct
6 your attention to that exhibit that you are looking at. Here
7 is the same thing here. The Exhibit is D-8. It says-- well,
8 you read those two lines there if you can.

9 A. "He made a gesture with his hand there. If it had
10 not been for that, I probably never would have noticed...."

11 Q. Noticed what?

12 A. "It."

13 Q. "It." He didn't say him. He said, "noticed it."
14 Right?

15 A. "I just for one split second, I got a glimpse, I
16 looked at him."

17 Q. Okay. Right, you want to put that into it too. It
18 says, "I just for one split second, I got a glimpse, I looked
19 at him." Is that right?

20 A. It looked like it was highlighted. I thought you
21 wanted me to read it.

22 Q. Okay. Well, that's what he said; right?

23 A. Yeah.

24 Q. He said it was a split second, a glimpse, and he
25 got a look; right? That's what I call a split second
26 glimpse. Would you agree with that?

27 A. Pretty close, yes.

28 Q. All right. And you didn't show him pictures until
29 well over a month later?

1 A. True.

2 Q. Now let me ask you this. You had an opportunity to
3 try to check-- now you checked some time after the event on
4 the children who were the children of Ms. Connie Moore; is
5 that correct? One of them was Lemarcus. He is younger, and
6 Marcus who is older; is that correct?

7 A. Yes. I asked about those children.

8 Q. Okay, you asked about those children, and you found
9 out that at the time you checked, Lemarcus was actually
10 wearing-- the younger child was actually wearing a size 8 and
11 a half shoe; is that right?

12 A. 7 and a half to 8 and a half.

13 Q. Well, let me see. Page 717 of your transcript.
14 Let's see what it says from the hearing. Page 717 at this
15 hearing. Your name is John Johnson; is that correct?

16 A. Correct.

17 Q. And this would have been you testifying somewhere
18 in a hearing in 1980-- excuse me, 1997. Is that correct?
19 Around about October or so?

20 A. I think that's correct.

21 Q. Okay, and what he, what you said at that time,
22 "What was his shoe size?" And you were talking about having
23 checked-- you checked, the time that you checked was after
24 the time of the incident, but you don't know; you were unable
25 to ascertain exactly when, but you know it wasn't immediately
26 after the incident. Isn't that true?

27 A. Repeat that question, please.

28 Q. When you checked, it was not immediately after the
29 incident, was it?

1 A. No. Well, it was within a few days.

2 Q. Well, what you said it was approximately-- you were
3 talking about Lemarcus Moore shoe size. "Yes, sir. I did."
4 "What was his shoe size?" "Approximately 8 and a half." Is
5 that correct?

6 A. Correct.

7 Q. Okay, and then you checked on Marcus Moore, and his
8 shoe size at that time was about 12; is that correct?

9 A. It was a 12, yes.

10 Q. Okay, and you don't-- well, you didn't actually
11 mark it. You didn't measure it. You did, you were able to
12 see his feet; is that correct?

13 A. I looked at his feet.

14 Q. You didn't measure-- did you measure them?

15 A. I looked at his shoe size.

16 Q. Well, that is not what you said at the last
17 hearing. At the last hearing when pressed, you just said
18 that somebody told you that was his size. Isn't that what
19 you said?

20 A. His daddy did tell me, but he was also in my
21 presence, and I physically looked at his shoes.

22 Q. Well, that is different than saying you measured
23 them. You didn't measure them, did you?

24 A. I didn't say I measured them, I don't believe.

25 Q. Okay, well, in any event at the time that you
26 looked at his feet, this was after the incident, so this had
27 to be at least after July of 1996. Is that correct?

28 A. Uh.

29 Q. It had to be after July the 16th of 1996; is that

1 correct?

2 A. Shortly after that, yes.

3 Q. He was a young man; is that correct?

4 A. Yes. He was still a young man.

5 Q. If Mr. Jack, Jack Matthews indicated that Lemarcus'
6 feet was 7 and a half when he checked them, and you are
7 telling us they were 8 and a half when you checked them, that
8 means they must have grown some; right?

9 A. All I'm going by is what I was told and what I was
10 shown, and that's all I know about.

11 Q. Well, young people's feet grow pretty fast
12 sometimes; right?

13 A. I don't know how fast their feet grow.

14 Q. Do you have children?

15 A. I have got a son, yeah.

16 Q. Don't their feet grow pretty fast? How old is he?

17 A. He is 17.

18 Q. Well, you have been through some big feet times. I
19 mean at certain points they start to pick up, don't they?

20 A. He is 17. I think he wears a size 10.

21 Q. All right, I see. But in any event, so you don't
22 know what this child's foot was, this Marcus' foot was of
23 your own personal knowledge because you didn't see them back
24 in January of 1996, did you?

25 A. If I can refer to my notes where I talked to his
26 father and the son together.

27 Q. What I'm asking you, did you see, did you talk to
28 them in January of '96, prior to the incident?

29 A. No. I did not talk to him prior.

1 Q. So you don't know what his foot size was in January
2 of '96, do you?

3 A. No, I don't.

4 Q. Marcus Moore is, in fact, Connie Moore's child. Is
5 that correct?

6 A. True.

7 Q. And if we have to look it up, we will, but I just
8 want to get this straight now. Isn't it true that you
9 actually didn't measure this person's foot or actually even
10 look at the shoes. You just, I mean you looked at the shoes,
11 but you didn't check on their sizes. You saw the shoes, and
12 you had his father tell you what size they were; isn't that
13 right?

14 A. He was wearing a size 12 tennis shoe when he came
15 to the police department in Winona where I asked him to bring
16 his son for me to talk to him--

17 Q. --But while--

18 A. --and his father and the son also confirmed the shoe
19 size.

20 Q. Okay, well, let me ask you this. We are looking at
21 page 722, and you show me in here anywhere where you say you
22 actually looked at this kid's shoe or you actually looked at
23 the shoe that he had on. 722.

24 BY MR. EVANS: Your Honor, I object on
25 relevance. I don't think there is any question at
26 the time he checked the shoes what size they were.

27 BY MR. LUMUMBA: Oh, I think it's a question.

28 BY MR. EVANS: This is not relevant.

29 BY MR. LUMUMBA: Judge, is that a relevancy

1 objection or a closing argument? I think that--

2 BY MR. EVANS: --My objection is relevancy if
3 you didn't hear it. It was on relevancy.

4 BY MR. LUMUMBA: Okay, well, then I don't
5 think it is necessary to start arguing that there
6 is no question about the shoe size.

7 BY THE COURT: Well, you are making some
8 arguments in the questions that you are asking him
9 about his children and shoe sizes that has got no
10 relevance whatsoever. Let's move on from this
11 point.

12 BY MR. LUMUMBA:

13 Q. Okay. Page 723, it says, "I just asked him what
14 size"--

15 BY MR. EVANS: --Your Honor, did you not just
16 sustain my objection?

17 BY THE COURT: I believe I did.

18 BY MR. LUMUMBA: Okay. I am prohibited from
19 asking that question, Your Honor? I thought that
20 you were sustaining an objection on the previous
21 question. If that's what I'm prohibited from, just
22 let me know.

23 BY THE COURT: What was the question?

24 BY MR. LUMUMBA: My question is if, in fact,
25 that he-- I just asked him what size shoe he wore.
26 That was what the transcript says, and I'm trying
27 to see if I can ask him that question.

28 BY THE COURT: Well, he has already answered
29 that question though, hasn't he?

1 BY MR. EVANS: Yes, sir.

2 BY THE COURT: He has already answered that
3 question.

4 BY MR. LUMUMBA: Okay, my other question would
5 be then, the question I was trying to ask:
6 Anywhere in here do you see where you indicate when
7 asked the question that you actually measured his
8 foot or looked at the shoe?

9 BY THE COURT: I will let him answer that
10 question.

11 BY THE WITNESS:

12 A. I don't think in that testimony I was asked to
13 specify in that regard, no.

14 Q. Do you indicate that here anywhere?

15 BY THE COURT: I believe he has answered that
16 question too. That is a complete answer he gave.

17 BY MR. LUMUMBA:

18 Q. Okay, let me ask you this, Mr. Johnson.

19 (Pause while Defense Counsel confer.)

20 Q. As to one of the men that Mr. Collins indicated he
21 saw, did he not tell you, "I never seen his face. All I seen
22 was more or less from the back of him, every time I seen
23 him"?

24 A. That's what he said in this statement.

25 Q. Now you did have an opportunity on about 8-15-96 to
26 talk to a gentleman by the name of Edward Lee McChristian; is
27 that correct?

28 A. I did.

29 Q. Okay, and Mr. McChristian was the person who lived

1 on Academy Street; is that correct?

2 A. Yes.

3 Q. And he told you on the day that he saw the person
4 who he knew as Mr. Flowers, he indicated he saw that person
5 walking up and down that street a whole lot of times, didn't
6 he?

7 A. I think he indicated that it was not unusual to see
8 him walking on that street.

9 Q. Right. But in any event, he indicated that the
10 person he saw, Mr. Flowers, that day had on baggy pants.
11 Isn't that correct?

12 (Hands document to the witness.)

13 A. He said that, yes.

14 (Mr. Lumumba writes on pad on easel.)

15 Q. And he indicated to you that he saw a person about,
16 between 7:30 and 8 o'clock; is that correct, in the morning?

17 A. I want to refer to my notes. I think that was-- it
18 might have been a little earlier than that, but I would have
19 to look at my notes to verify.

20 (Mr. Lumumba hands document to witness.)

21 Q. Did you do a taped statement from him?

22 A. Yes.

23 Q. Okay, let me see and we will find out.

24 (Pause while Mr. Lumumba is looking for the
25 statement.)

26 Q. So you don't recall offhand when Mr. McChristian
27 said that he actually saw this individual, what time of day.
28 Is that correct?

29 A. I'm not sure if it was 7:30 to 8:00 A M. It could

1 have been a few minutes earlier than that.

2 Q. Okay. Do you recall him saying that his friend
3 goes to work every day at 8 o'clock? Do you recall him
4 saying that?

5 A. He told me that his girlfriend had to be at work at
6 8 o'clock.

7 Q. Oh, okay; excuse me.

8 A. Leave--

9 Q. --I'm not talking about Mr. Kennedy. I'm talking
10 about Mr. McChristian. Do you remember the difference
11 between those two individuals?

12 A. Yes, I do.

13 Q. Okay, and would it be safe to say that Mr.
14 McChristian said between 7:30 and 8 o'clock?

15 A. I think that is close to the time, but I wouldn't
16 swear to it.

17 BY MR. LUMUMBA: I have no further questions
18 from Mr. Johnson at this juncture, Judge.

19 BY THE COURT: All right, sir. Mr. Evans.

20 BY MR. EVANS: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MR. EVANS:

22 Q. All right, Mr. Johnson, before we get started, how
23 long have you worked for me?

24 A. Will be eight years in January, I believe.

25 Q. Would you explain to the ladies and gentlemen of
26 the jury what your background was when you came to work with
27 me?

28 A. I had been with the Police Department in Winona for
29 about 18 years there and in Grenada. I had been Chief of

1 Police for the City of Winona for six years, Assistant Chief
2 four years. That is basically my background in law
3 enforcement.

4 Q. All right. And on the day of these murders, did
5 you have an occasion to go to the crime scene?

6 A. I did.

7 Q. And did you assist what you could at the crime
8 scene?

9 A. I did.

10 Q. From the crime scene, were you present when the
11 Defendant was interviewed?

12 A. Not at the crime scene but--

13 Q. No, after the crime scene.

14 A. After the crime scene that day, yes.

15 Q. Wait just a second. At the time the Defendant was
16 interviewed did you or anyone else shake his hand?

17 A. No.

18 Q. Why?

19 A. Well, we had discussed and knew we could possibly
20 run a GSR kit on him and knew that procedure would prevent
21 that.

22 Q. And a GSR kit is a gunshot residue kit?

23 A. Correct.

24 Q. Now you have been asked about interviewing numerous
25 witnesses. When you interviewed, and I will try to take them
26 not necessarily in the order you interviewed them, but in the
27 order of the events as far as this trial. When you
28 interviewed Mr. Kennedy, how positive was he that the person
29 he saw walk by his house in the direction of Angelica on the

1 morning of the murders was the Defendant?

2 A. He was very positive.

3 Q. Was this somebody he had not known before, or was
4 this somebody he was already familiar with?

5 A. He had known him for some time.

6 Q. Did you or anyone else make any attempt to try to
7 influence him on who to identify?

8 A. No.

9 Q. Katherine Snow, how positive was she when she
10 picked the Defendant's photograph out of this lineup right
11 here?

12 A. She was very positive. She was sitting across the
13 room when the photograph was shown. She said, "That's him,"
14 and leaned forward and pointed to the Defendant.

15 Q. Now I noticed that her name is on the back of
16 Curtis Flowers' picture. Who put her name on the back of
17 that picture?

18 A. She did.

19 Q. Now is there anything at all suggestive about this
20 lineup?

21 A. Not that I'm aware of.

22 (Mr. Evans holds the exhibit in front of the
23 jury.)

24 Q. Did y'all do anything in setting this lineup at all
25 to try to influence her on who to pick out of that lineup?

26 A. No.

27 (Exhibit S-92 was passed to the jury.)

28 Q. The lineup that was shown to Charles Collins, who
29 furnished these pictures?

1 A. Wayne Miller with the Mississippi Highway Patrol.

2 Q. Now basically every picture in there is a little
3 bit different sized, isn't it?

4 A. Yes.

5 Q. Did you or anybody else tell her pick out the
6 picture with the largest head?

7 A. No.

8 Q. Did any of you tell her to pick out the picture
9 with the smallest head?

10 A. No.

11 Q. Did y'all do anything to try to influence her on
12 what picture to pick out of this lineup?

13 A. No.

14 Q. Or him; I'm sorry.

15 A. No.

16 Q. And he had actually been shown twelve pictures
17 before he positively identified the person that he saw, had
18 he not?

19 A. I think that's correct. Yes.

20 (Exhibit S-91 was passed to the jury.)

21 Q. Mr. McChristian, how positive was he that on the
22 day of the murders he saw this Defendant walk by his house?

23 A. He was positive.

24 Q. Was that somebody that he did or didn't already
25 know before this happened?

26 A. He had known him prior to this.

27 Q. Mary Jeanette Fleming, how positive was she that
28 the person that she met walking in the general direction of
29 Tardy Furniture that morning was Curtis Flowers?

1 A. She was positive.

2 Q. Did you or anyone else try to influence her to make
3 that identification?

4 A. No.

5 Q. Clemmie Fleming, how positive was she that this man
6 was running from the direction of right behind Tardy
7 Furniture?

8 A. Very positive.

9 Q. Did you or anyone else try to influence her to make
10 that identification?

11 A. Absolutely not.

12 Q. Now you have been asked about reward. Somebody did
13 put a reward out; is that correct?

14 A. There was a reward.

15 Q. As a matter of fact, it was approximately three
16 months before that reward went up to thirty thousand dollars,
17 wasn't it?

18 A. That's correct.

19 Q. At the time that one of these questions that you
20 have been asked about offering a thirty thousand dollar
21 reward to somebody, the reward wasn't even up that high, was
22 it?

23 A. That's true.

24 Q. You were asked by opposing counsel if you were told
25 what the shoe sizes that Connie's children wore; is that
26 right?

27 A. That's true.

28 Q. Were you also told whether they had ever owned any
29 Fila shoes?

1 A. Yes.

2 BY MR. LUMUMBA: Now objection. Objection.
3 Hearsay.

4 BY MR. EVANS: Your Honor, he went into what
5 he was told by the children and by their father.

6 BY MR. LUMUMBA: No. First of all, I never
7 asked him a question about anything the children
8 said. He indicated that his father had told him
9 what size their shoes were.

10 BY THE COURT: I believe he was talking about
11 size. He didn't talk about the rest of it.

12 BY MR. EVANS: Well, there was a conversation
13 about their shoes, Your Honor.

14 BY MR. LUMUMBA: May we approach, Judge?

15 BY THE COURT: Uh-hum.

16 BY MR. LUMUMBA: He can bring the children
17 here if he would like.

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
19 THE JURY AS FOLLOWS:)

20 BY MR. EVANS: So can he.

21 BY MR. LUMUMBA: First of all, I was cross-
22 examining his statement that he checked, and then
23 when he said he checked, then I showed that
24 actually he didn't check. He just talked to the
25 father, and the father made a statement about the
26 shoe size. There was no-- we didn't touch anything
27 about anything the children said. I have never
28 asked him what the children said, so what the
29 children said is directly and totally hearsay

1 unless he wants to bring them here.

2 BY THE COURT: He didn't ask about what the
3 children said. He didn't ask that question.

4 BY MR. EVANS: Okay, Your Honor, I remember it
5 differently but--

6 BY THE COURT: --He did get into conversation
7 about the father, but he didn't -- the only
8 question--

9 BY MR. LUMUMBA: It was just about size.

10 BY MR. EVANS: Your Honor, he was--

11 BY THE COURT: --Let me think just a second.
12 What about the child talking about the shoe being a
13 12?

14 BY MR. LUMUMBA: No, no, no. The child didn't
15 say the shoe was 12.

16 BY THE COURT: I think he did.

17 BY MR. LUMUMBA: No, no, Judge, in the
18 transcript -- let's read the transcript. The
19 father says that the shoe was 12.

20 BY THE COURT: I'm not talking about what was
21 in any transcript. It's what he was asked today.

22 BY MR. LUMUMBA: No, I never asked him if the
23 child told him the shoe was 12, and they know
24 that. I asked him if the father told him the shoe
25 was 12, and he said yes. The father told him the
26 shoe was 12, and the child ain't told him nothing.

27 BY MR. EVANS: He has impeached him on saying
28 you didn't actually look at the shoe. You were
29 going by what the child--

1 BY MR. LUMUMBA: --I didn't--

2 BY MR. EVANS: --told and the father told-- may
3 I finish? You asked him, you went by what the
4 children and the father told you about the shoes,
5 didn't you?

6 BY MR. LUMUMBA: Well, to be absolutely
7 certain, Judge, I want you to be able to check the
8 integrity of what he said. Can we look back and
9 look at the transcript? Look at the transcript.
10 She doesn't have to look back that far to find
11 that. Let's see what the child, let's see if the
12 child's name is ever mentioned. He knows I never
13 mentioned the child--

14 (Both Counsel talking at the same time.)

15 BY MR. HORAN: --impeachment was to prove that
16 he didn't actually check the shoes, that he was
17 basing his opinion on the representations from the
18 father and the child. He has got to--

19 BY THE COURT: --I'm going to--

20 BY MR. LUMUMBA: --Can we check, please? I'm
21 asking that we check the transcript.

22 BY THE COURT: Even if it's true, I think what
23 Mr. Horan said is correct. I'm going to allow it.
24 I think you opened it up.

25 END BENCH CONFERENCE

26 BY MR. EVANS:

27 Q. Mr. Johnson, when you talked with the children and
28 their father, were you able to determine from them whether
29 they had ever owned any Fila shoes or not?

1 A. The father said that Marcus had never owned any
2 Fila tennis shoes or Lemarcus, and he brought him to the
3 police department. We actually looked at his shoe size and
4 both of which, the child and the father denied that he had
5 ever owned any Fila Grant Hill tennis shoes.

6 BY MR. LUMUMBA: Judge, the child testified in
7 court the last time--

8 BY MR. EVANS: --Your Honor, may we approach
9 the bench?

10 BY MR. LUMUMBA: I haven't got a problem with
11 that.

12 BY MR. EVANS: May we approach the bench?

13 BY MR. LUMUMBA: He knows the child testified.

14 BY MR. EVANS: I also know what else the child
15 said if we want to get into testimony--

16 BY THE COURT: --I want y'all to come up here.

17 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
18 THE JURY AS FOLLOWS:)

19 BY MR. EVANS: Your Honor, I strongly object
20 to him trying to throw out testimony in front of
21 this jury that is not before this jury.

22 BY MR. LUMUMBA: What I--

23 BY MR. EVANS: --I would ask that he be
24 directed not to.

25 BY MR. LUMUMBA: I will find you the
26 transcript. The child walked in the court, and he
27 tried to impeach him and couldn't, and he testified
28 that he had-- now how are you going to let him do
29 that, Judge, when I didn't ask that question. He

1 had no report to verify it. The last time he was
2 asked about how he checked the shoes he didn't
3 mention the child. I didn't mention the child, and
4 now he is going to throw out what the child says
5 and preclude me from going into that? The child
6 said when he came--

7 BY MR. HORAN: --well--

8 (Both Counsel talked at the same time.)

9 BY MR. LUMUMBA: --Excuse me, excuse me,
10 excuse me. You want the child to say that he
11 didn't hold--

12 BY MR. EVANS: --Your Honor, may we talk a
13 little bit lower?

14 BY THE COURT: Wait, Wait. Hold on.

15 END BENCH CONFERENCE.

16 BY THE COURT: The jury needs to go out.

17 JURY LEAVES THE COURTROOM.

18 (NOTE: After the jury left the courtroom, the
19 Court asked the Court Reporter to read back the
20 testimony of Mr. John Johnson concerning questions
21 asked about the shoe size of the children of Connie
22 Moore which began with what is now page 2437, line
23 2 of this transcript and continuing for several
24 pages concerning the shoes. Following the
25 readback, there was the following further
26 discussion at the bench with the jury out:)

27 BY THE COURT: There is nothing in that
28 testimony where anything was elicited verbally from
29 the children, from the child.

1 BY MR. LUMUMBA: Okay. Can I say one other
2 thing, Judge? There is also nothing in there when
3 we talked about the type of the shoe. The whole
4 discussion was on the size of the shoe. I think it
5 is inappropriate hearsay for them to add something
6 which is not part of the discussion. There is no
7 discussion in there about the size-- the type of
8 the shoe. The only discussion was about the size
9 of the shoe. That's the only discussion we had.
10 And so I don't think, I think it is also
11 inappropriate for them to solicit information about
12 what anybody said about the type, particularly
13 where we have been given no discovery where he ever
14 said that. We have no discovery where this man has
15 ever supposedly said that the child never had a
16 Fila shoe.

17 BY MR. EVANS: Now that is not true.

18 BY THE COURT: Well, of course, the question
19 is whether you opened it up. That's the issue.

20 BY MR. LUMUMBA: Yeah, well, I think I opened
21 up the discussion on size. I didn't open up-- and
22 the way that I got in it, he says he checked at the
23 last trial. He says he checked. Then he comes out
24 and says the father told him.

25 BY THE COURT: Okay. My ruling is that you
26 cannot ask anything in relation to any conversation
27 with the children because he has not opened that up
28 at all. You can go into what he discussed with him
29 in relation to size of those but not as to what

1 type shoe they were.

2 BY MR. HORAN: He has opened with the father
3 with reference to--

4 BY THE COURT: --He has opened that up, but he
5 didn't open up all the hearsay about doing that.
6 So I'm going-- he can go into them about what he
7 did about size.

8 END BENCH CONFERENCE.

9 BY THE COURT: (To the bailiff) Hold up. Wait
10 a minute, Jerry.

11 BY MR. LUMUMBA: In view of the Court's
12 ruling, can I ask that all the testimony, that the
13 Court instruct the jury that all the testimony with
14 regard to type of shoe or what anything the child
15 allegedly said be stricken?

16 BY THE COURT: Yes. I will instruct them to
17 that effect. Okay.

18 BY MR. EVANS: Can I approach the bench just a
19 second?

20 (AS THE JURY WAS STARTING TO COME BACK IN THE
21 COURTROOM, THERE WAS THE FOLLOWING CONFERENCE AT
22 THE BENCH OUT OF THE HEARING OF THE JURY AS
23 FOLLOWS:)

24 BY MR. EVANS: Your Honor, I don't want to do
25 anything the Court does not approve of. At this
26 point I intend to ask him if he did, in fact, talk
27 with the children and their father about what kind
28 of shoes they wore, and I'm going to stop it at
29 that, but that can't be hearsay.

1 **BY THE COURT:** No, that is not hearsay unless
2 you say what they said.

3 **BY MR. EVANS:** I just wanted to make sure
4 there was no problem with the Court.

5 **BY THE COURT:** That is fine.

6 END BENCH CONFERENCE

7 JURY IS PRESENT.

8 **BY THE COURT:** Ladies and gentlemen, a short
9 while ago Mr. Johnson was asked by the District
10 Attorney about some conversations with either the
11 Moore children or their father concerning the type
12 of shoe, rather than the size, the type of shoe. I
13 have ruled that that was, that that is hearsay and
14 that is inadmissible, and I instruct you that you
15 are not to consider those hearsay statements in
16 this case. Will each of you agree not to do that?

17 **BY THE JURORS:** (Jurors either nod their heads
18 or say "Yes, sir.")

19 **BY THE COURT:** Okay.

20 **BY MR. EVANS:** May I proceed, Your Honor?

21 **BY THE COURT:** Uh-hum.

22 CONTINUED DIRECT EXAMINATION BY MR. EVANS:

23 Q. All right, Mr. Johnson, you can't go into what--

24 **BY THE COURT:** --Wait a minute; I'm sorry.
25 Let the record reflect that the jury answered the
26 Court's question affirmatively.

27 **BY MR. EVANS:**

28 Q. Mr. Johnson, you can't go into what you were told,
29 but did you, in fact, talk with the children's father and the

1 children about what type of tennis shoes they owned?

2 A. Yes.

3 Q. Without going into what you were told, did you, in
4 fact, ask of them if they had ever had any Fila Grant Hill
5 tennis shoes?

6 BY MR. LUMUMBA: I would object to that too
7 because in view of the hearsay statements and in
8 view of the transcript of the last trial, I think
9 that's inappropriate.

10 BY THE COURT: Let me see y'all up here just a
11 second.

12 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
13 THE JURY AS FOLLOWS:)

14 BY THE COURT: If I hadn't had to make that
15 other ruling, I think you could ask that question,
16 but in light of the fact that I did make it, I
17 think by asking it, you almost imply the answer on
18 the thing. So I think we need to move on from what
19 they were. Do you see what I mean?

20 BY MR. EVANS: Whatever the Court rules.

21 BY THE COURT: Well, you are back dooring me.

22 BY MR. EVANS: I'm trying.

23 BY THE COURT: Yeah, I know.

24 BY MR. LUMUMBA: Well, my objection as to the
25 whole line of inquiry--

26 BY MR. HORAN: --Judge, you didn't say he
27 couldn't go into the father's representation. He
28 has opened the door on that. It's just the sons'
29 representations.

1 **BY THE COURT:** What?

2 BY MR. HORAN: He opened the door about the
3 father talking. That was clearly on the record.

4 **BY THE COURT:** Yes, I have ruled he couldn't
5 do that though.

6 BY MR. HORAN: Couldn't do it on the father?

7 **BY THE COURT:** Uh-hum.

8 BY MR. HORAN: Okay.

9 END BENCH CONFERENCE.

10 (Mr. Evans brings easel with pad that Mr.
11 Lumumba had been writing on over in front of the
12 jury and witness stand.)

13 BY MR. EVANS:

14 Q. Mr. Johnson, as to Mr. Kennedy that is marked up
15 here as BoJack, how positive was he in his identification of
16 the Defendant?

17 A. He was very positive.

18 (Mr. Evans writes on pad with pink marker,
19 "positive I.D.")

20 Q. Did he know or did he not know the Defendant before
21 that date?

22 A. He did know Curtis Flowers.

23 (Mr. Evans writes "knew" and circles it.)

24 Q. As to Mr. McChristian, did he know him before that
25 date?

26 A. Yes, he did.

27 Q. And did he ID him?

28 A. Yes.

29 Q. Did Patricia Hollman ID him?

1 A. Yes.

2 (Mr. Evans writes "I.D." on pad.)

3 Q. And did she know him before that date?

4 A. Yes.

5 (Mr. Evans writes "knew.")

6 Q. Did Katherine Snow positively ID him?

7 A. Yes.

8 (Mr. Evans writes "I.D.")

9 Q. Did Clemmie Fleming positively ID him?

10 A. Yes.

11 (Mr. Evans writes "I.D.")

12 Q. And where did she see him? What did she see him
13 doing?

14 A. He indicated to me that the first place she saw him
15 was 72 steps of my steps and 92, I think of hers from the
16 back, would be the southwest corner of Tardy's running in a
17 westwardly direction.

18 (Mr. Evans writes "Running" on pad.)

19 Q. Was he running toward or away from Tardy Furniture?

20 A. He was running away.

21 (Mr. Evans writes "away from Tardy.")

22 Q. Mary Jeanette Fleming, did she identify the
23 Defendant?

24 A. Yes, she did.

25 (Mr. Evans writes "I.D.")

26 Q. Did she already know him before that day?

27 A. Yes, she did.

28 (Mr. Evans writes "knew.")

29 Q. Charles Collins, did he identify the Defendant?

1 A. Yes.

2 (Writes "I.D.")

3 Q. And where did he see him?

4 A. In front of Tardy Furniture Store on Front Street.

5 Q. Mr. Johnson, all of these people that you have just
6 described identifying the Defendant, what side of Highway 51
7 did they see him on on the morning of the murders?

8 A. Patricia Hollman saw him on the west side--

9 BY MR. LUMUMBA: I object to what they saw. I
10 think he can say what they told him.

11 **BY THE COURT:** Well, of necessity he is going
12 to have to base his answer on that.

13 BY MR. EVANS: May the witness finish
14 answering, Your Honor?

15 **BY THE COURT:** Uh-huh.

16 BY MR. EVANS:

17 Q. You may continue.

18 A. I believe all the other witnesses saw him east of
19 Highway 51-- correction, yes. East of Highway 51.

20 Q. Okay. Mr. Johnson, are you very familiar with
21 Winona?

22 A. Yes, I am.

23 Q. I will hand you Exhibit 70.

24 BY MR. EVANS: First, Your Honor, may I have
25 this marked for identification?

26 **BY THE COURT:** The big one?

27 BY MR. EVANS: Yes, sir.

28 **BY THE COURT:** Yes.

29 (LARGE MAP OF STREETS OF WINONA ON WHITE BOARD

1 WAS MARKED AS STATE'S EXHIBIT S-109 FOR
2 IDENTIFICATION.)

3 BY MR. EVANS:

4 Q. Mr. Johnson, Exhibit 70 purports to be a map of
5 Winona showing the areas in question. I will ask you to look
6 at Exhibit 109 and see if all the locations you have just
7 described are on this larger map?

8 A. Yes. This depicts the area, yes.

9 Q. I would like for you to take this red pen, and as I
10 go through them, I would like for you to mark the location
11 and write out beside it which location it is. Starting with,
12 can you point out on that diagram the approximate area that
13 the Defendant lived?

14 A. He lived on McNutt. It would be right in here off
15 of Cemetery Lane on the right hand side, right in here. Go
16 ahead and mark it on the--

17 Q. --If you would, put an "X" there and out from it
18 draw a line and put "Curtis Flowers." Well just, have you
19 already done it?

20 A. I am working on it.

21 Q. That's fine. Next if you would, show us where
22 Patricia Hollman lived?

23 A. She lived right next door to Curtis Flowers.

24 Q. All right, if you would, mark that, draw a line and
25 put her name.

26 A. (Witness complies.)

27 Q. Do you know the approximate area that the
28 Defendant's sister that he said he went to see that morning
29 lived?

1 A. Over on Dennis Street. I don't know exactly which
2 house.

3 Q. All right, mark the approximate area as best you
4 can. Just write "Defendant's sister."

5 A. (Witness complies.)

6 Q. Next I would like for you to mark the location, the
7 approximate location where Jeff's Store is located?

8 A. It's right in here. You want me to just--

9 Q. --Yeah, if you would, go ahead and put an "X" there
10 and just draw a line and write "Jeff's Store."

11 A. (Witness complies.)

12 Q. Next show us where Mr. Kennedy lives.

13 (Witness points.)

14 A. Draw a line?

15 Q. Draw a line and write his name.

16 A. (Witness complies.)

17 Q. Next draw in approximately where the factory of
18 Angelica is located.

19 A. With an "X"?

20 Q. Right. That will be fine. And write the name of
21 the factory out by that.

22 A. (Witness complies.)

23 Q. Next show where Mr. McChristian stated that he saw
24 the Defendant.

25 A. It would be approximately right here. (Witness
26 marks on exhibit.)

27 Q. Next draw in where Ms. Mary Jeanette Fleming saw
28 the Defendant.

29 A. Let's see. (Witness marks.)

1 Q. Next draw in where Mr. Charles Collins saw the
2 Defendant.

3 A. (Witness marks.)

4 Q. All right, now I want you to take this blue marker
5 and draw in approximately where Tardy Furniture is located.

6 A. (Witness marks.)

7 Q. All right. Next show us where-- no, go back to the
8 red. Next I want you to show us where Clemmie Fleming told
9 you she saw the Defendant running.

10 A. (Witness marks.) Where she first saw him?

11 Q. Right. Where she first saw him.

12 A. (Witness marks and writes.)

13 Q. Next I want you to take this green marker and so
14 there won't be any question, I want you to draw through where
15 Highway 51 is with that green marker.

16 A. (Witness marks.)

17 BY MR. EVANS: All right, Your Honor, may I
18 have the witness step down?

19 BY THE COURT: Okay.

20 BY MR. LUMUMBA: Has that been admitted into
21 evidence?

22 BY THE COURT: No, it hasn't, I don't believe.
23 It sure hasn't.

24 BY MR. EVANS: I offer this exhibit into
25 evidence at this point, Your Honor.

26 BY MR. LUMUMBA: I would object until I have a
27 chance to cross-examine or to voir dire, one of the
28 two. I don't want it to be frozen at this point
29 where I can't also add some comments to it, Judge.

1 BY MR. EVANS: I don't know what his objection
2 is. He can draw on any exhibit later after it's
3 entered--

4 BY THE COURT: --That's right. You can add to
5 it once it's admitted.

6 BY MR. LUMUMBA: Okay, if that's the case, I
7 have no objection.

8 BY THE COURT: Okay. It is admitted.

9 (LARGE MAP OF WINONA ON WHITE BOARD PREVIOUSLY
10 MARKED AS STATE'S EXHIBIT S-109 FOR IDENTIFICATION
11 WAS NOW ADMITTED IN EVIDENCE.)

12 BY MR. EVANS:

13 Q. Mr. Johnson, I will hand you this marker, and I'm
14 going to try to stand where the jury can see. And I'm going
15 to hold the exhibit for you. If you would, try to step back
16 to where everybody can see. I think you are blocking. Step
17 back some. You are blocking some of the jurors. If you
18 would, point out on this larger diagram where the Defendant
19 lived?

20 A. Right here.

21 Q. Now is that the east or the west side of 51?

22 A. That is west of Highway 51 here.

23 Q. Okay. In his statement, I believe he said he went
24 to his sister's house; is that correct?

25 A. That's true.

26 Q. Where is that located?

27 A. Over here on Dennis Street.

28 Q. Is that east or west of 51?

29 A. That is west of Highway 51.

1 Q. And the only other place he said in his statement
2 he went that morning was Jeff's Store; is that correct?

3 A. Correct.

4 Q. Point that out to us.

5 A. Right here.

6 Q. Is that on the east or west side of Highway 51?

7 A. West.

8 Q. Next point out where Edward Kennedy also known as
9 BoJack saw the Defendant that morning.

10 A. Right here--

11 BY MR. LUMUMBA: --Continuing objection.

12 BY THE WITNESS: --at Donnager Drive--

13 BY MR. LUMUMBA: I'm sorry. Continuing
14 objection to that phraseology of the questions,
15 Judge.

16 BY THE COURT: Okay. Overruled.

17 BY THE WITNESS:

18 A. That is actually Angelica Drive now, but it is
19 marked Donnager Drive.

20 Q. All right, is that on the east or west side of 51?

21 A. That is on the east side of Highway 51.

22 Q. Okay. Next point out where the factory of Angelica
23 is actually located.

24 A. Right here.

25 Q. Okay. And they have a large parking area that goes
26 with that; is that correct?

27 A. That's true.

28 Q. Do you know basically where Doyle's car was parked
29 that morning?

1 A. Yes.

2 Q. If you would, just take this ink pen and place an
3 "X" where the car was.

4 A. (Witness complies.)

5 Q. All right, next, and again-- Angelica, is that on
6 the east or west side of 51?

7 A. East.

8 Q. I believe you are blocking.

9 A. It's east of Highway 51.

10 Q. Mr. McChristian. Would you point out where he told
11 you that he saw the Defendant that morning?

12 A. Here on Academy at 602 Academy.

13 Q. All right, and where Mary Jeanette Fleming saw him?

14 A. On Campbell Street. I didn't mark it well. Right
15 here.

16 Q. Okay. Where Charles Collins saw him?

17 A. Right here.

18 Q. And where Clemmie Fleming saw him?

19 A. Right here.

20 Q. And are all of those locations on the east or west
21 side of Highway 51?

22 A. They are all east of Highway 51.

23 Q. All right, if you would take your seat again for a
24 second.

25 A. (Witness resumes witness stand.)

26 Q. You were specifically asked about some of the
27 statements that they gave. I will hand you your notes on
28 Katherine Snow, and I will ask you to tell exactly what
29 description was the first description she gave the person she

1 saw leaning against Doyle Simpson's car?

2 A. A dark skinned male, 25 to 30 years of age, short
3 hair, approximately 5 foot 10, stocky build; could possibly
4 I.D.

5 Q. All right. Were you present when the Defendant was
6 interviewed several times?

7 A. I was present when he was interviewed the first
8 time.

9 Q. Okay. What time in the first time did he tell you
10 that he got up?

11 A. He said about 6:30 A M that morning.

12 Q. What time did he tell you in that first statement
13 he went to his sister's?

14 A. I think that was 9:30 A M.

15 Q. And what time did he tell you he went to Jeff's
16 Store?

17 A. I really need to refer to my notes to verify.

18 Q. You can.

19 BY MR. LUMUMBA: Judge, may we approach?

20 (Brief pause.) Never mind.

21 BY THE WITNESS:

22 A. Can I answer the question?

23 Q. Yes, if you had a chance to look at them.

24 A. 10:30 AM is when he went to Jeff's Store.

25 Q. Okay.

26 BY MR. LUMUMBA: Can I just see what notes the
27 officer is looking at, please?

28 BY MR. EVANS: Same notes you have been
29 furnished.

1 (Notes were shown to Mr. Lumumba.)

2 BY MR. EVANS:

3 Q. You were also asked about taking so long to show
4 Mr. Collins the lineup. Was there some reason that it took
5 longer to show him the lineup than it did Ms. Snow?

6 A. Almost immediately-- I don't know the exact days,
7 but almost immediately after this, Fuzzy Jones, his
8 brother-in-law, had a major heart problem and was
9 hospitalized for a long time. And it made it very difficult
10 to set up the appointment. We did try to communicate with
11 him to set that up.

12 Q. All right, and you were also asked about Mr.
13 Collins' shoe size. Were you able to observe his shoes?

14 A. Yes.

15 Q. What did you notice about them?

16 A. He was wearing low quarters the day that I saw him,
17 and they were a lot smaller than a ten and a half in
18 appearance.

19 BY MR. EVANS: May I have the Court's
20 indulgence for just a moment.

21 (Pause while State's Counsel confer.)

22 BY MR. EVANS:

23 Q. Mr. Johnson, you remember a person by the name of
24 Roy Harris?

25 A. Yes, I remember Roy.

26 Q. Did you have an occasion to talk to Roy Harris?

27 A. Yes, I did.

28 Q. What did he tell you?

29 A. He told me that he had given Clemmie Fleming a ride

1 downtown, and that she was supposed to pay her furniture
2 bill. And at that point she told him to turn right and not
3 to stop for some reason and went down near the intersection
4 of Carrollton Avenue and Church Street, that she mentioned
5 something about Curtis Flowers.

6 Q. All right. Did you make any special attempt to
7 find out exactly what path he took that morning?

8 A. I did.

9 Q. Explain to the ladies and gentlemen of the jury
10 what you did.

11 A. I asked a police officer to carry us, and I asked
12 Roy to get in the car with me and drive the route that he
13 traveled.

14 Q. And what route did he go?

15 A. From near the police station on, I think that is
16 Quitman, Liberty Street to Front Street, south on Front
17 Street just past Tardy Furniture, turned right on Carrollton
18 Avenue going west; from there to Church south until Powell
19 Street; from there to 51 Highway and then right on 51
20 Highway.

21 Q. Did the trail that Roy Harris took you on and
22 showed you, was it the same trail that Clemmie Fleming had
23 told you that they took?

24 A. Exactly.

25 Q. And what did he say was going on at the point that
26 Clemmie Fleming said something about seeing Curtis Flowers?

27 A. He indicated that he, that when he turned south on
28 Church Street, that he got a glimpse of somebody in the rear
29 view mirror running across this vacant lot on to Campbell

1 Street, towards Campbell Street. A black male with rounded
2 features wearing a white T-shirt.

3 Q. And what did Clemmie Fleming say at the point he
4 saw that person?

5 A. Something about Curtis Flowers.

6 Q. What did Roy Harris tell you as far as whether he
7 could or could not identify the person that he saw in the
8 rear view mirror?

9 A. He indicated that he could not.

10 Q. Did you have an occasion to attempt to interview
11 some people as far as trying to follow up the Defendant's
12 statement as to where he said he was that morning? As far as
13 his sister, his girlfriend, folks like that?

14 A. I attempted to, but I was unable to get up with
15 them.

16 Q. Did any of them come in to talk to you?

17 A. His brother Archie Flowers talked to me.

18 Q. How about his girlfriend or his sister?

19 A. I talked to some people that had reference to
20 girlfriend but specifically-- oh.

21 Q. Talking about Connie Moore?

22 A. She indicated that she was at work at Richardson
23 Brothers.

24 BY MR. LUMUMBA: Objection.

25 BY THE COURT: Sustained. That wasn't
26 responsive. Sustained as to that.

27 BY MR. EVANS:

28 Q. Mr. Johnson, there has been testimony about this
29 being the shoe box that was recovered from the Defendant's

1 bedroom. Are you familiar with this shoe box?

2 A. Yes, I am.

3 Q. What was the condition of that shoe box - what
4 would it be, roughly a year and a half ago when it was
5 recovered from his bedroom?

6 A. It was in better condition than this. As far as,
7 you know, smoother, straighter, more rigid and all. I can
8 see, looks like fingerprint powder, etc. on it; I'm not sure,
9 some kind of dust and soiled. It was cleaner than that.

10 Q. Mr. Johnson, what, if any, reason would you have to
11 try to get all these people to lie on this Defendant?

12 A. I have no such reason.

13 Q. Did all of these people that you have gone through
14 and shown on this diagram, did each of them positively
15 identify for you the Defendant Curtis Flowers?

16 A. Yes, they did.

17 Q. Did you in any way try to influence any of them as
18 to who to identify?

19 A. No, I did not.

20 (State's Counsel confer briefly.)

21 Q. When you talked with Clemmie Fleming, the girl that
22 told you she saw the Defendant running from Tardy Furniture,
23 what was her demeanor?

24 A. She was real nervous and upset.

25 Q. Did she tell you why?

26 BY MR. LUMUMBA: Objection.

27 BY MR. EVANS: I haven't asked what she said
28 yet. I just asked if she told him why.

29 BY THE COURT: Okay, he can answer that

1 question but no further.

2 BY THE WITNESS:

3 A. Yes.

4 BY MR. EVANS: That's all we have, Your Honor.

5 BY MR. LUMUMBA: Just a few others questions.

6 RECROSS-EXAMINATION BY MR. LUMUMBA:

7 Q. Sometimes people look real nervous and upset when
8 they are lying; right, officer?

9 BY MR. EVANS: Your Honor, we were not allowed
10 to go into that. I would be glad for him to answer
11 his question.

12 BY MR. LUMUMBA: No, I haven't asked what she
13 said.

14 Q. I am asking do sometimes people look nervous and
15 upset when they are lying? Isn't that true?

16 A. That is possible. I don't know.

17 Q. Okay, so you don't, you didn't know her prior to
18 the time you first talked to her. Isn't that correct?

19 A. I knew Clemmie Fleming to see her. Is that what
20 you are saying?

21 Q. You did know her before that date of this
22 incident?

23 A. Yeah, I think I knew Clemmie Fleming to see her.

24 Q. To see her, but you knew nothing else about her;
25 right?

26 A. No, I didn't really know her.

27 Q. You didn't know if she was a liar or a person that
28 generally told the truth. You didn't know that, did you?

29 A. I had no knowledge of that.

1 Q. Okay, and Officer, I don't think anyone has ever
2 said that you forced anybody to say that they saw Curtis. I
3 haven't said that to you, that you forced anybody. I haven't
4 said that to you, have I?

5 A. No.

6 Q. No, okay. But I have asked you questions about
7 what people said and how they said it. I have asked you
8 questions about exactly what they told you; right?

9 A. Would you repeat that question, please?

10 Q. I have asked you questions about exactly what the
11 people told you; isn't that true? About descriptions and
12 things of that nature; I have asked you those questions?

13 A. Generally yes, I will answer that question.

14 Q. Well, I am missing my marker here. Oh, here we
15 go. Before I accuse somebody else. Let me see. And as I
16 look for Clemmie Fleming's name on here, that is important.
17 In other words, the reason you take notes on descriptions of
18 what people say because it's important to see if their
19 identifications are actually accurate first of all; right?

20 A. That can be a reason to do that, yes.

21 Q. Right. And you do that because you want to check
22 what they say now versus what they said then. You want to
23 make notes so you can always see how consistent they are;
24 right?

25 A. That is possible.

26 Q. And you're also possible and good police work to
27 see how what one person says compared to what another person
28 says; right? You want to check it; right?

29 A. You record all the information, yes.

1 Q. Okay, well, in one-- well, for instance, Clemmie
2 Fleming, who was riding with Roy Harris; is that correct?
3 She said she was riding with Roy Harris; right?

4 A. Yes.

5 Q. Okay. By the way, you went by and showed Roy
6 Harris a photograph and asked him if that was the man he saw
7 running. Didn't you do that?

8 A. I did not.

9 Q. Did you show him any photograph?

10 A. I did not.

11 Q. Okay, you never showed him a photograph, okay. By
12 the way, did you have anywhere in your notes where it says
13 here that Roy Harris said that he could not identify the
14 man? Do you have that anywhere?

15 A. I do not. Not on this note.

16 Q. Do you have a note anywhere where Roy Harris in the
17 world? Did you write down a note anywhere in the world that
18 said that?

19 A. The only information may be in his statement.

20 Q. Where he says he could not identify the man. Is
21 that in his statement?

22 A. I don't know if it is or not.

23 Q. We will get back to that. Well, let me ask you
24 this. Clemmie Fleming, she indicated that she saw somebody
25 running around about 10 o'clock, didn't she?

26 A. Approximately 10 o'clock.

27 Q. About 10 o'clock. And when you compare-- and she
28 said she saw somebody running. She never said that she saw
29 anybody in Tardy Furniture, did she?

1 A. She did not.

2 Q. Never said she saw somebody right at Tardy
3 Furniture, did she?

4 A. 93 of her steps from Tardy's.

5 Q. 93 of hers, 72 of yours. That is not right at
6 Tardy's. That is out in the middle of the street some place,
7 isn't it?

8 A. That is 72 of my steps from the back of Tardy's.

9 Q. Well, that is not right at Tardy's. Would you
10 agree with me that is not right up against--

11 A. In my opinion it is pretty close to Tardy's.

12 Q. Well, I know that is your opinion now, but listen
13 to my question.

14 A. Okay.

15 Q. Is that up against Tardy's?

16 A. It's not touching Tardy's building.

17 Q. Okay. It's not coming out of the door?

18 A. It is 72 steps.

19 Q. Is it coming out of the door?

20 BY MR. EVANS: Your Honor, I think--

21 BY THE COURT: --he has answered the
22 question--

23 BY MR. EVANS: --this witness has clearly
24 answered--

25 BY THE COURT: Let's move on.

26 BY MR. LUMUMBA: Okay, but Judge, I don't know
27 if there is any reason why he can't answer my
28 questions rather than--

29 BY MR. EVANS: --I believe he has.

1 **BY THE COURT:** Because he did twice.

2 BY MR. LUMUMBA:

3 Q. In any event, let's move on. 10 A M, right? And
4 actually Mr. Porky Collins said he saw two black males out in
5 front of Tardy's right about the same time; right? 10 A M,
6 didn't he say that? 9:55 to 10 o'clock; isn't that what he
7 told you?

8 A. I would have to review that.

9 Q. Have you got his statement there? Take a good look
10 at it.

11 (Pause while the witness reads. Mr. Lumumba
12 gets out easel with pad on it.)

13 Q. Do you have your handwritten notes you took of Mr.
14 Collins on the 16th?

15 A. Okay. In front of Tardy's about 9:15 to 9:20 A M.

16 Q. Oh. He said he saw somebody about 9:15 to 9:20.
17 Is that when he saw these two men?

18 A. That's what, that's the note I took on the 16th.

19 Q. I see. So on the 16th he told you between 9:15 and
20 9:20, and according to your estimation or terms, the
21 investigation you conducted, the people didn't even die
22 until, until 10 o'clock. Am I right?

23 A. I don't know exactly what time they died. I know
24 that--

25 Q. --Well, let me strike that question and ask you
26 this one. The other gentleman, Mr. Sam Jones, indicated that
27 he came in there around about 9:30 or so, and they were
28 deceased. Is that correct?

29 A. I'm not sure that that is correct. I would have to

1 look at Mr. Jones' statement.

2 Q. Okay, well, I think the jury has heard Mr. Jones'
3 testimony. Well, let me ask you this. Now Porky Collins
4 having said that he saw somebody about 9:15 or 9:20, two--
5 what did he say they looked like? Two medium complexion
6 men?

7 A. Two black males, medium complexion.

8 Q. Now the woman that you said that-- and the woman,
9 Ms. Snow, she said she saw somebody in Angelica's parking
10 lot. She didn't say they were medium complexion, did she?
11 She said it was a dark complected man. Isn't that what she
12 said?

13 A. Dark skin, 25 to 30 years of age, short hair--

14 Q. --Okay, listen to my question. She said a dark
15 skinned man that she saw; right?

16 A. Correct.

17 Q. He said he saw two medium skinned men; right?

18 A. That was his description, yes.

19 Q. Okay, that was his as opposed to her. But then
20 again people described clothing to you too; right?

21 A. Sure.

22 Q. And when they described clothing to you, Ms.
23 Fleming, Ms. Jeanette Fleming said the person that she saw,
24 and she said she saw him around 9 o'clock; isn't that
25 correct?

26 A. I didn't take the statement from her, but I think
27 close to that time.

28 Q. And she indicated that they had black pants and a
29 white shirt on. Is that correct?

1 A. I didn't take that statement, but I assume.

2 Q. You wouldn't deny that; right?

3 A. I wouldn't deny it.

4 Q. Well, if you saw that she said they had white pants
5 and-- and a white shirt and dark pants and then you know --
6 you did take the statement from BoJack; right?

7 A. I did.

8 Q. And BoJack, you took his statement some, on
9 9-17-96, some two months after the time; is that correct?

10 A. Yes.

11 Q. Okay, and let me see if I understand you
12 correctly. First of all, we know, of course, and you know,
13 of course, you were not out there at that time; right?

14 A. No, I was not out there.

15 Q. So there is no way that you can tell us that BoJack
16 saw anything actually of your own knowledge. All you can
17 tell us is what BoJack said; right?

18 A. I can tell you what BoJack Kennedy told me that he
19 saw.

20 Q. Well, see that's the answer to my question, yes.
21 Right? Is that right?

22 A. I hope so.

23 Q. Okay, did you, did he tell -- the only thing you
24 can tell us is what BoJack said about what he saw; is that
25 right?

26 A. As far as what Mr. Kennedy said, that's all I can
27 tell you.

28 Q. And you have to tell us then that he said he saw
29 long white pants and a black sweater. Is that correct?

1 A. If that's what he said, yes.

2 Q. And that's, and you don't know of your own personal
3 knowledge whether he saw that on the 16th or whether he saw
4 Mr. Flowers on some other day, do you, personally?

5 A. He told me directly on the 16th.

6 Q. No. Do you understand my question?

7 A. No, sir.

8 Q. You don't know of your personal knowledge because
9 you didn't make any observations as to what day he saw him,
10 if he saw him at all. Isn't that true?

11 A. I didn't see him on the 16th at that time--

12 Q. --Okay, so basically whenever you said this is what
13 Mr. BoJack saw or this is what Clemmie saw, what you were
14 really saying is what they told you; right?

15 A. Exactly.

16 Q. And the same person that told you that he saw him
17 on the 16th told you that he had long white pants on and a
18 black sweater; isn't that correct?

19 A. Mr. Kennedy, yes.

20 Q. And that same person told you about him on the same
21 day, he was talking about the same day that Patricia Hollman
22 was talking about who said she saw him between, around about
23 7:30, and he had a black windbreaker pants on which is
24 actually the opposite of a pair of white pants. Is that
25 correct?

26 A. True.

27 Q. And she said that he had a white T-shirt on at the
28 same time that this man said he had a black sweater on; is
29 that right?

1 A. Not at the same time, no.

2 Q. Okay, well, he said he saw him around about 7:15 to
3 7:30. Is that correct?

4 A. Yes.

5 Q. She saw him about 7:30 or before, somewhere between
6 7:00 and 7:30; right?

7 A. Yes.

8 Q. She saw him come into the house, stay in the house
9 about 20 minutes, and then leave in that same time period;
10 right?

11 A. That's what she said, yes.

12 Q. And he had the same clothes on when she saw him
13 come in and the same clothes when she saw him go out; is that
14 right?

15 A. I think that's correct, yeah.

16 Q. And even if you say it's not the same time, there
17 is certainly no more than 10 minutes difference anywhere in
18 there; is that correct? On this man that had long white
19 pants on when one person saw him and black windbreaker pants
20 on when another person saw him; isn't that correct?

21 A. Possibly, yes.

22 Q. It would also be correct, would it not be, that
23 that is the same person that Jeanette Fleming claims she saw
24 on that same day. Now Jeanette Fleming didn't even come to
25 you, didn't even talk to you until 2-13-97; isn't that
26 correct?

27 A. I'm not sure of the date. I didn't take that
28 statement.

29 Q. Well, you know it was well after a reward had been

1 offered and published in the paper many times; isn't that
2 correct?

3 A. Possibly, but I can't swear to that.

4 Q. She says the same man that BoJack said he saw with
5 long white pants on had black pants, dressy pants; right?

6 A. I don't remember that. If it's in the statement,
7 that's what he said.

8 Q. If it's in the statement that he also said-- that
9 she also said that he had a white shirt and he was dressy,
10 sort of dressy; right?

11 A. Yeah, if that's what was in the statement.

12 Q. And you remember her telling you the sort of
13 dressy, maybe it was a white button up shirt. It wasn't a
14 T-shirt. She said it was a white dress shirt. Isn't that
15 what she told you?

16 A. I think I explained. I didn't get the statement
17 from Mary Jeanette Fleming.

18 Q. Okay, but if she said that he had a white dress
19 shirt and if she told us that when she was on the stand and a
20 dressy black pants--

21 BY MR. EVANS: --Your Honor, this witness
22 doesn't know what different witnesses testified to,
23 and that is improper.

24 BY THE COURT: That is an improper question.

25 BY MR. LUMUMBA:

26 Q. Okay, white dressy pants. I mean, excuse me; black
27 dressy pants and white shirt. You would agree with me that
28 is certainly different than long white pants; right?

29 A. There is some difference in that, yeah.

1 Q. And it is a definite, certainly different than a
2 white shirt and a black sweater. There is a lot of
3 difference in that too; right?

4 A. There is a difference in it.

5 Q. And it would be safe to say that both of those are
6 different than a black windbreaker pants made of silky
7 looking substance; right?

8 A. That's true too.

9 Q. It would also be safe to say that both of those are
10 different than a white T-shirt. Wouldn't that be true?

11 A. Yes.

12 Q. 5'6" is certainly different than 5'10"; is that
13 correct?

14 A. Yes, it is.

15 Q. And the statement that you taped that Mrs. Snow
16 gave you, her statement, her words out of her mouth was that
17 the man was 5'6"; isn't that correct?

18 A. I think-- I'm not looking at it. In an interview
19 prior to the taping of the statement, she said he was 5 foot
20 10--

21 Q. Oh, I see, but then when you turned the tape on,
22 she just changed--

23 BY MR. EVANS: --Your Honor, may the witness
24 finish his answer before he interrupts?

25 BY THE COURT: That's right. You both can't
26 talk at the same time.

27 BY MR. LUMUMBA:

28 Q. Go right ahead.

29 A. And when I asked her in the interview prior to this

1 did she make a different measurement there, then was it not
2 5'10," that's what she corrected it to, 5'10".

3 Q. I see. So she had said 5'10," but then when you
4 turned the tape on, she said 5'6"?

5 A. When she started her statement, yes.

6 Q. And you had to correct her?

7 A. I didn't have to correct her. I pointed out to her
8 and she corrected herself.

9 Q. I see. I see. All right, now but anyway, she is
10 supposed to be looking at a person between 7:00 and 7:30 in
11 Angelica parking lot; right?

12 A. That's correct.

13 Q. And 7:00 and 7:30, that is the same time, between
14 those same hours is the time that Ms. Hollman said she saw
15 the man come into the house and then leave out 20 minutes
16 later; right?

17 A. Same approximate time, yes.

18 Q. And Angelica is at least 12 to 15 minutes walk away
19 from the home of Mr. Flowers. Isn't that correct?

20 A. Less than 12.

21 Q. Well, the last time that you testified in a hearing
22 you said 12 to 14, didn't you? Now it's less than 12;
23 right? What did you say the last time?

24 A. It's a little over 12 minutes, I think, if you walk
25 from their house at a brisk pace back down Cemetery Lane,
26 east on Powell to 51, south on 51 to Angelica, and then
27 straight to where the car was of the front door. If you cut
28 through by Wal-Mart, it's a lot shorter.

29 Q. I see. I see. And the last time you told us from

1 yes, I can't swear that I carried each one of them, but I
2 have made direct communication with them to verify the exact
3 locations.

4 Q. Well, let's visit the locations again. And can you
5 approach the jurors, please.

6 A. Sure.

7 (Witness steps down in front of Exhibit S-109.)

8 Q. This is Mr., this is the home on McNutt Street.

9 A. That is Tardy Furniture Store.

10 Q. I'm sorry. This is Tardy Furniture Store; is that
11 correct?

12 A. Uh-hum.

13 Q. And then there is a place on McNutt Street which is
14 over here on the other side of 51; is that correct?

15 A. That is correct.

16 Q. And that would be-- you have to step back so the
17 jurors can see. That would be the home of Curtis Flowers; is
18 that correct?

19 A. Yes.

20 Q. And that's when he was wearing, according to the
21 witness, black silky pants and a white T-shirt; right? At
22 this point?

23 A. Well, that was what Patricia Hollman said, yes.

24 Q. Okay. Well, she is the witness that you talked to;
25 right?

26 A. Right.

27 Q. Okay, why don't you put that down there. Silky
28 black pants. You can abbreviate if you like?

29 A. Can I hold it up where I can write on it?

1 Q. Yes, sir. Silky black pants.

2 A. (Witness writes on Exhibit S-91.)

3 Q. White T-shirt.

4 A. (Witness writes.)

5 Q. And put between 7:00 and 7:30 AM.

6 A. (Witness complies.)

7 Q. And we won't write that down there, but we remember
8 that he stayed in the house at least 20 minutes; right,
9 according to her statement?

10 A. At one point she said he went in the house for some
11 time, yes.

12 Q. And she said 20 minutes. Do you want to check
13 that?

14 BY MR. EVANS: Your Honor, are we talking
15 about her testimony, what she said to the officer,
16 the investigator or what? I am completely lost
17 now.

18 BY MR. LUMUMBA: Well, let me--

19 BY MR. EVANS: --I would ask that he direct
20 his attention to specifically whatever he is asking
21 him about.

22 BY MR. LUMUMBA:

23 Q. She told you in her taped statement that he stayed
24 in there for about 20 minutes. Isn't that correct?

25 A. That is, yes, at one point.

26 Q. Now let me ask you this. Oh, she changed it later
27 on?

28 A. No, I have no knowledge of her changing anything.

29 Q. Okay. Well, now we have her describing at one

1 point. Now the other person that you said described somebody
2 was Mr. Edward Kennedy. He is down here on what is called--
3 what is that Donnager?

4 A. It's Angelica Drive. It used to be Donnager
5 Drive.

6 Q. Okay. By the way, the plant is all the way down
7 here at the end, right on Church Street; right? The corner
8 of Church and Angelica Drive; is that correct?

9 A. It is down next to Church Street there. That is
10 south Church, or Old Highway 51.

11 Q. Okay, so if somebody put it up here at this line
12 right even with Academy directly, what we would call this
13 directly south of Academy, that would be incorrect. The
14 plant is actually down here?

15 A. Correct.

16 Q. Alongside Church; is that correct?

17 A. Correct.

18 Q. Okay. Now the plant is Edward Kennedy. He said
19 that he saw someone also between about 7:15 and 7:30, didn't
20 he?

21 A. I think that's correct.

22 Q. Okay, why don't you put that time there.

23 A. (Witness writes on Exhibit S-91.)

24 Q. And he indicated the person had long white pants
25 and a black sweater; right? Correct?

26 A. If that's correct. (Witness writes.) And a long
27 white sweater?

28 Q. Long white pants and black sweater. You took the
29 statement; right? You took it?

1 A. Yeah.

2 BY MR. EVANS: Your Honor, I believe he is
3 asking him what he wants him to write.

4 BY MR. LUMUMBA:

5 Q. Well, I want you to write what you took from him.
6 If that is different than that, then you can change it.

7 A. I would like to refer to my statement on it.

8 Q. Very good. Would you like to refer to your
9 statement? Feel at home. I notice you didn't have to refer
10 to your statement when the prosecution was asking you to
11 write stuff down. Is there a reason for that?

12 A. I knew where the locations were.

13 Q. Okay. You just don't know the description?

14 A. (Pause while witness looks through papers.)

15 Q. Do you have, you have it there?

16 A. I may have it.

17 Q. Go right ahead.

18 A. (More pause while witness looks through papers.)

19 Q. Do you have Mr. Kennedy's taped statement?

20 A. Possibly.

21 Q. Can you get that for me, please.

22 A. Sure. (Pause.) Gray short sleeve, jersey type
23 shirt. Write all that on here?

24 Q. If you like; go right ahead. So what you are
25 saying is--

26 A. --you are asking me to--

27 Q. --excuse me; excuse me. What we are going to do
28 here is ask you this. Did Mr. Kennedy give you a taped
29 statement? I would like to know what came, the words that we

1 have recorded out of his mouth saying that the man had a
2 black sweater on and a long, and white pants. Did he tape a
3 statement saying that?

4 BY MR. EVANS: Your Honor, I have not objected
5 to him going into the clothing that these people
6 gave. I did not go into any taped statements. I
7 don't think it is proper, and I think it is just
8 irrelevant at this point.

9 BY THE COURT: You asked him on all these
10 people if he was positive of their--

11 BY MR. EVANS: --Yes, sir--

12 BY THE COURT: --positive of their I.D.

13 BY MR. EVANS: And I'm not objecting to his
14 identification. I am just objecting to the
15 relevance of going back and pulling the statements
16 out. He can ask him. I have no problem with him
17 asking about his identification.

18 BY THE COURT: Well, I think it is opened up.

19 BY THE WITNESS:

20 A. I believe he had on a black sweater and white
21 pants.

22 Q. Is that what he says there?

23 A. Then he said, then he indicated that, said, I
24 thought it might have been a gray, "might have been a gray
25 jersey T type shirt or short sleeve shirt." He said, "It was
26 gray?" "That is right." "Was it gray or black?" "You know,
27 a gray jersey with a little black ink."

28 Q. Okay, so--

29 A. "What kind of pants did he have on?" "White

1 pants."

2 Q. Okay, well, let me ask you this. When you, that is
3 interesting. Now here is a man who starts off by telling you
4 a person had a black sweater on; right? Is that correct?

5 A. Correct.

6 Q. And then upon further questioning, he moves to the
7 point of saying that a man had on a gray shirt with a little
8 black ink; right?

9 A. I think he is trying to be more descriptive.

10 Q. Well, doesn't that kind of bother you a little bit
11 that he moved all the way from a black sweater to a gray
12 shirt with a little black ink? Didn't that disturb you a
13 little bit, make him sound like he was a little bit uncertain
14 of what he was talking about? Didn't it bother you?

15 A. I think he was trying to be accurate with what he
16 was telling me.

17 Q. Well, do you think when he told you a black
18 sweater, he wasn't trying to be accurate?

19 A. No.

20 Q. Well, we will keep in mind that he said after he
21 said a black sweater with white pants, that he went on to
22 describe that this black sweater was actually a gray short
23 sleeve shirt with a little, tiny or little with some black
24 writing on it. We will remember that; okay?

25 A. Black ink.

26 Q. Black ink.

27 A. I don't know whether he was trying to say it had
28 some black color mixed in it or what.

29 Q. I see, but that still doesn't make it a white

1 T-shirt, does it?

2 A. No.

3 Q. And that is what Patricia Hollman said it was;
4 right?

5 A. Correct.

6 Q. That still doesn't make it a dressy white shirt,
7 does it?

8 A. No.

9 Q. Okay. Now let me ask you this. Mary Fleming, she
10 indicated on the day she saw the man, and Mary Fleming's
11 statement is not taken until sometime after January. Isn't
12 that correct?

13 A. I'm not, like I said, I didn't take her statement
14 but--

15 Q. Do you have a copy of her statement?

16 A. No, I don't think I do. I may have. No, I don't
17 have a copy of her statement.

18 Q. Okay. We will just stand on the record for
19 whatever she said for that, but in any event, whenever she
20 talked to you, Mary Fleming whenever she talked to the
21 police, you would not disagree that she indicated that the
22 man had a long white shirt or had a white dress shirt or just
23 to be more specific, a white shirt and black dressy pants.
24 You are not going to deny that, are you?

25 A. No.

26 Q. Okay, why don't you write that down.

27 A. White dressy shirt?

28 Q. And dressy pants, black dressy pants?

29 A. (Witness writes on Exhibit S-109.)

1 Q. Now you would agree that those black dressy pants,
2 there is a conflict between that and white pants; right?

3 A. Sure.

4 Q. There is a conflict between a white shirt and a
5 black sweater; right?

6 A. Sure.

7 Q. There is a conflict between black dressy pants and
8 black silky looking windbreaker pants?

9 A. Sure.

10 Q. Okay. There is a conflict between a white T-shirt
11 and a white dress shirt?

12 A. Yeah.

13 Q. It could be that two people saw the same man on two
14 different days. That happens sometimes; right?

15 A. I'm not going to say that, what it could be there.
16 These people were very specific they saw him on the day of
17 the murders there in Winona.

18 Q. And they were very specific about what he had on
19 when they saw him; right?

20 A. To their knowledge, yes.

21 Q. Well, their knowledge, that's all we are dealing
22 with. When they made their identification, it was based on
23 their knowledge; right?

24 A. Correct.

25 Q. They were thinking out of the same heads that gave
26 you the description of the clothes; right?

27 A. Correct.

28 Q. You had no more reason because you weren't present
29 to feel that the clothing description was any more accurate

1 than the physical description. Isn't that right?

2 A. I had no reason to question what they told me about
3 the clothing.

4 Q. Did Curtis Flowers in his statement, that statement
5 we talked about, the one where he told you he didn't have a
6 problem with Ms. Tardy; he said that in the statement;
7 right?

8 A. He said that.

9 Q. He said he wasn't upset; right?

10 A. He indicated that he was not upset about that.

11 Q. Okay, in that same statement that he gave you, did
12 he ever tell you that I have never walked down Academy
13 Street? Did he ever tell you that?

14 A. No.

15 Q. Did he ever tell you that I have never walked down
16 Church Street or Campbell Street?

17 A. No.

18 Q. Did he ever tell you that I have never walked past
19 or down, down past Anguilla [sic] Drive past BoJack's house?
20 Did he ever tell you that?

21 A. No.

22 Q. Did he ever tell you I never walked past
23 McChristian's house?

24 A. No.

25 Q. He said on that day I didn't. That's what he said;
26 right?

27 A. He said on that day he didn't go east of Highway 51
28 at any time.

29 Q. And he told you that the day of the incident;

1 right?

2 A. Yes.

3 Q. And you have got people here making statements that
4 didn't talk to you until a week later, and in some instances
5 you have got people making statements about people who were
6 supposed to have known Curtis Flowers that didn't talk to you
7 until almost 7 and 8 months later was the first time that
8 they talked to you as it relates to Clemmie Fleming. Isn't
9 that correct?

10 A. That's true about Clemmie Fleming, yes.

11 Q. And it is also true about Mary Fleming. She
12 didn't talk to you until many, many months later. Is that
13 right?

14 A. It was some time later before she came forward.

15 Q. And I think I asked you before; most people's
16 memories tend to fade over time, but you don't know about
17 these people; right?

18 A. Some people can lose memory after time, yes.

19 Q. Clemmie Fleming's statement was made in April of
20 1997; isn't that correct?

21 A. I think that's correct.

22 Q. Tell me when -- maybe this will refresh your
23 memory.

24 (Mr. Lumumba hands document to the witness.)

25 A. April 11th, '97.

26 Q. She is the niece of Jeanette Fleming; is that
27 correct?

28 A. I don't know their relationship, but they are
29 distantly related. I don't know exactly what.

1 Q. Did you know that she was a cousin of Latarsha
2 Blissett?

3 A. No. I didn't know that.

4 Q. Okay, could you approach one more time, please?

5 A. Sure.

6 (Witness steps down in front of board.)

7 Q. Now she told you she saw him out there around about
8 10 o'clock; is that correct?

9 A. Who are you talking about?

10 Q. Clemmie Fleming.

11 A. Yes.

12 Q. Do you see Clemmie Fleming? You have got Clemmie
13 Fleming right here.

14 A. (Witness points.)

15 Q. And this is Tardy's here; right?

16 A. Yes.

17 Q. This is where she first saw the man?

18 A. Yes.

19 Q. Okay, now you are saying-- that is an interesting
20 observation, by the way. You are saying that she saw the man
21 72 feet away from Tardy's. Well, if you were to point to 72
22 feet in this courtroom, how far would that be?

23 A. I didn't say 72.

24 Q. Well, 72 steps.

25 A. 74, I think.

26 Q. 74. Where would that be? Show-- how many of your
27 steps?

28 A. It's almost, it would be real close to 74 yards.

29 Q. 74 yards? That is almost a football field; is that

1 right?

2 A. A football field is a hundred foot plus the end
3 zone-- a hundred yards plus the end zone.

4 Q. I'm sorry; let's just talk about the playing
5 field. 74 yards is only 25 yards short of a football field;
6 right?

7 A. 74 would be 26.

8 Q. Well, 26 yards from a football field; is that
9 right?

10 A. Yeah.

11 Q. She never saw the man she saw any closer than 75
12 yards to Tardy's; is that right?

13 A. That's correct.

14 Q. And you have characterized that as running from
15 Tardy's? How do you know where the man was during those 75
16 yards? How do you know he was ever at Tardy's?

17 A. I never said he was at Tardy's. I said he was
18 right at Tardy's where she saw him running from.

19 Q. 75 yards is right at Tardy's?

20 A. I consider it real close, yes. I told you it
21 wasn't right up against it, but it's close.

22 Q. You can't even point the 75 yards to a point in
23 this courtroom, can you?

24 A. No. You can't either.

25 Q. Well, true. I admit that. I mean in other words,
26 it is so far away that you would be out of this courtroom
27 pointing to it; isn't that right?

28 A. I don't know exactly how far it is across the hall
29 and where those other rooms. I can't swear to that.

1 Q. But it is out of the courtroom, the point you are
2 talking about?

3 A. It is out of this room right here, yes.

4 Q. And she never saw the person she saw at any time
5 prior to the time she saw him at that spot; right? At the
6 that 75 yards away from Tardy's, 76, 75, 74?

7 A. Would you explain what you mean by she never saw
8 him anywhere--

9 Q. --She never saw him that day, the person that she
10 saw 74 yards away, until she saw him at that spot. Is that
11 true?

12 A. Correct.

13 Q. Did that person have a car?

14 A. No.

15 Q. So why don't you put right next to-- and this is
16 about 10:00 A M; right?

17 A. Yes.

18 Q. Why don't you put next to her name, "no car."

19 A. No car. (Witness writes.)

20 Q. That person have anybody with him?

21 A. No.

22 Q. Put "no companion."

23 A. (Witness writes.)

24 Q. And what time do you estimate that Porky Collins
25 told you that he saw the person? Well, actually we just read
26 a report where he claims he saw him at 9:15 to 9:20; right?

27 A. That's what I made a note of, yes.

28 Q. Uh-hum. Interesting.

29 BY THE COURT: Have a seat there, Mr.

1 Johnson. Let me see y'all up here just a second.

2 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
3 THE JURY AS FOLLOWS:)

4 BY THE COURT: I want you to fully explore
5 whatever you need to explore, but you are asking
6 these questions over and over again. You have
7 covered this ground a bunch. The rules don't allow
8 that.

9 BY MR. LUMUMBA: Judge, I agree. The
10 prosecution keeps coming back putting it on the
11 board, doing different things and repeating the
12 same stuff.

13 BY THE COURT: I know but even saying
14 redirect, you have already covered this ground at
15 least once or twice. Let's move on.

16 END BENCH CONFERENCE

17 BY MR. LUMUMBA:

18 Q. Okay, can we put down here on the map, Porky
19 Collins, the time he gave you of 9:15 or 9:20. Do you want
20 to come down here?

21 A. (Witness steps down and writes on Exhibit S-109.)

22 Q. Then he also indicated that he approached this spot
23 and saw these men after he went to Wal-Mart; right? That's
24 what he told you; right?

25 A. I think that's correct.

26 Q. And he said he gave you a receipt from Wal-Mart;
27 right?

28 A. He didn't give me a receipt. He gave Mr. Miller a
29 receipt.

1 Q. Okay, but the receipt-- do you remember the receipt
2 saying 9:43? Do you remember that?

3 A. No. I don't remember.

4 Q. Okay, well, why don't you put down here, "saw men
5 after Wal-Mart."

6 A. (Witness writes.)

7 Q. Saw a brown car; right?

8 A. (Witness writes.)

9 Q. Did you talk to-- and then right here Mr.
10 McChristian on Academy Street, I think he said he saw the
11 person with baggy pants; is that right?

12 A. (No response.)

13 Q. And if he said that, if you check your notes and he
14 said that, I would like for you to write that on there.

15 A. (Pause while witness looks at notes.) He said he
16 doesn't really remember what kind of clothing he had on.

17 Q. All right, what was that about baggy pants? It
18 doesn't have baggy pants down there?

19 A. (No response.)

20 Q. No, that was his statement later on. Do you have
21 your notes?

22 A. (Pause while witness gets his notes.) "Baggy
23 pants. Don't remember what was said."

24 Q. Don't remember what was said, but he had baggy
25 pants on; right?

26 A. Uh-hum.

27 Q. Okay, we are going to hurry up and finish this
28 off. Will you come down here and write "baggy pants" down
29 here under McChristian.

1 A. (Witness writes.)

2 Q. Okay, and let me see. Then under Mr. Collins we
3 have already written saw him at Wal-Mart. Clemmie Fleming,
4 she is supposed to have saw at 10:00 A M. Why don't you put
5 "10:00 A M."

6 A. (Witness writes.)

7 Q. Okay, let me just make sure right before you leave
8 to see if we have got it right for the jury now. Here is a
9 man according to the witnesses you talked to that was seen
10 around about, somewhere between 7:00 and 7:30 going into his
11 house, staying in there 20 minutes, and he was seen with
12 silky black pants and a white T-shirt. Is that correct?

13 A. Right.

14 Q. Is that your understanding? And then he leaves
15 here, and then at some point he winds up crossing or passing
16 Edward Kennedy's house, and at that time, by the time he
17 leaves this house with silky black pants and crosses Edward
18 Kennedy's house also between 7:00 and 7:30, he has got long
19 white pants and a black sweater. Is that right?

20 A. Right.

21 Q. And then by the time he walks down here into, and
22 he walks into Angelica's parking lot. Now Ms. Snow couldn't
23 tell you what he had on; is that correct?

24 A. I think that's correct--

25 Q. --Except he didn't have a cap; right?

26 A. Yeah.

27 Q. But you also--

28 BY MR. EVANS: --Your Honor, I object. How
29 many times are we going to go over this same

1 thing?

2 BY MR. LUMUMBA: Well, I'm going to go past, I
3 am finishing up right now, Judge.

4 BY THE COURT: Okay.

5 BY MR. LUMUMBA:

6 Q. Okay. But you did talk to Doyle Simpson; is that
7 correct?

8 A. I did.

9 Q. And Doyle Simpson told you how she described the
10 man to him; is that right?

11 A. That would be in the statement, yeah.

12 Q. Yeah, he said that he had short pants on and a
13 white cap; right?

14 A. I think that's correct.

15 Q. Okay, so the man gets down here to the parking lot,
16 the man who left his home with silky black pants, passed this
17 man's house in the white pants, gets down in the parking lot,
18 he has got short pants and a white cap; is that right?

19 A. Yeah.

20 Q. And then this man with the short pants and the
21 white cap walks up. He comes back here down Academy Street,
22 and then by that time he has baggy pants on. Is that right?

23 A. By his description, yes.

24 Q. And then by the time he goes down here, he turns
25 and he passes Mary Fleming, and he has a white dress shirt,
26 button up shirt, and a black dressy pants; is that right?

27 A. That's right.

28 Q. Okay, and then he, this is the same man that comes
29 down here around about 10 o'clock as far as Clemmie Fleming

1 is concerned, and this is a man who is 72 yards or 72
2 whatever from Tardy's, and he has no car and no companion at
3 10:00 A M; right?

4 A. Right.

5 Q. Although this gentleman here, Porky Collins, who of
6 course says he sees him about 9:15 or 9:20, also says he sees
7 him after Wal-Mart which has a receipt of 9:43; right?

8 A. That's correct.

9 Q. And then this man here says he had another man with
10 him, walking in the direction--

11 BY MR. EVANS: --Your Honor, I object. He
12 never said he had another man with him. He said he
13 saw him arguing with a man--

14 BY MR. LUMUMBA:

15 Q. --okay, correction. He said he was arguing with
16 another man; right? But she don't see no other man, but he
17 sees him arguing with another man right around the same time;
18 right? Is that right?

19 A. Same time as what?

20 Q. As Clemmie has to be seeing him because she is
21 seeing him around 10:00. This man has been to Wal-Mart at
22 9:43. So it has got to be after 9:40 that he sees him;
23 right?

24 A. Close approximate time, yes.

25 Q. Okay, and he has no man and no car; right - when
26 Clemmie sees him?

27 A. Correct.

28 Q. And when Porky sees him, he has got a man in a
29 brown car; right?

1 A. Correct.

2 Q. So here is the man who starts out in black silky
3 pants, ends up without a car and without a car; right? With
4 a car and without a car; right?

5 A. I'm sorry. You lost me.

6 BY THE COURT: He has already answered that
7 question.

8 BY MR. LUMUMBA:

9 Q. Okay, excuse me. I don't want you to be lost.
10 Were you kind of lost when you were at all those statements
11 that--

12 BY MR. EVANS: --Your Honor, I object. That
13 is improper.

14 BY THE COURT: That is argumentative.
15 Sustained.

16 BY MR. LUMUMBA:

17 Q. Do you have any report anywhere, any notes anywhere
18 where you indicate that you checked the shoes or looked at
19 the shoes of Mr. Collins and felt they couldn't match the
20 print?

21 A. No.

22 Q. Do you have any notes anywhere...

23 (Pause while Defense Counsel confer briefly.
24 Confers with Mr. Freelon.)

25 Q. Do you have any notes anywhere where you or any of
26 your fellow officers or companion law enforcement authorities
27 checked to see if and talked to people and got people's names
28 that you talked to with respect to the whereabouts of Doyle
29 Simpson on that day? Have you got any notes anywhere that

1 shows that you checked to see where he was that day?

2 A. We do.

3 Q. And could you show those to me, please.

4 A. Yes. (Witness opens his briefcase.)

5 Q. And while you are looking for that, also show me
6 any that you have that shows that you checked on Emmitt
7 Simpson.

8 **BY THE COURT:** Let me see y'all up here.

9 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
10 THE JURY AS FOLLOWS:)

11 **BY MR. EVANS:** This is improper redirect.

12 **BY THE COURT:** Where is this proper on
13 redirect? He didn't go into that.

14 **BY MR. LUMUMBA:** I think he did ask that.

15 **BY THE COURT:** No, he didn't either. I'm not
16 going to allow that.

17 **BY MR. LUMUMBA:** Okay. Very good.

18 **END BENCH CONFERENCE**

19 **BY MR. LUMUMBA:**

20 Q. Okay, excuse me. The Judge has ruled that, not to
21 do that. Is there a four way stop on Front Street at Summit?

22 A. No. It's not.

23 **BY MR. EVANS:** Your Honor, this is not proper
24 redirect.

25 **BY THE COURT:** Sustained.

26 **BY MR. LUMUMBA:**

27 Q. No, no. You asked questions, you were asked
28 questions about Roy Harris; is that correct?

29 A. I don't remember asking any questions about--

1 Q. --Did he ask you questions about Roy Harris and the
2 statement that Roy Harris gave? This gentleman over here.

3 BY MR. EVANS: Your Honor, all I asked him was
4 the direction that Roy Harris carried him.

5 BY THE COURT: And he can go into that, but as
6 to extraneous questions, he can't so if you want to
7 ask him, ask him--

8 BY MR. LUMUMBA: --Well, that's my question--

9 BY THE COURT: --I mean ask him directly.

10 BY MR. LUMUMBA:

11 Q. Is there a four way stop-- hold on.

12 A. No.

13 (Pause while Defense Counsel confer.)

14 Q. There is four way stop at Summit and Front Street;
15 isn't that correct?

16 A. No, there is not.

17 BY MR. EVANS: Your Honor, that is the same
18 thing I think you have just ruled on. If he wants
19 to ask him which direction they went, I have no
20 problem.

21 BY THE COURT: I sustain the objection in the
22 form that it is asked.

23 BY MR. LUMUMBA:

24 Q. Okay, well, let me ask you this. You have
25 indicated to you that Roy Harris said he went in front of
26 Tardy's store; is that correct?

27 A. Roy Harris indicated to me that he went in front of
28 Tardy Furniture Store--

29 Q. --I am showing you Roy Harris' statement. You show

1 me where in here Roy Harris ever says he went in front of
2 Tardy Furniture Store.

3 A. Oh, me.

4 BY MR. EVANS: Which statement are we
5 referring to?

6 BY THE WITNESS: May the 7th.

7 BY MR. LUMUMBA: Do you have a second
8 statement of Roy Harris?

9 BY MR. EVANS: I am asking you which one you
10 are referring to. You are handing it to a witness,
11 whether it's an oral statement or a written
12 statement--

13 BY MR. LUMUMBA:

14 Q. --Any statement you have gotten from Roy Harris that
15 says he went in front of Tardy's Furniture Store, I want you
16 to show me that.

17 BY MR. EVANS: And again, Your Honor, to speed
18 things up, what we asked him about was where Roy
19 Harris carried him.

20 BY THE WITNESS:

21 A. "That is Church Street that comes through by the
22 Post Office. But didn't you go down Front Street like in
23 front of Tardy Furniture Store?" "Yes, sir. I went downtown
24 Front Street."

25 Q. "Yes, sir. I went downtown Front Street." Isn't
26 that what it says?

27 A. Yes, sir.

28 Q. Does he say anywhere that he went in front of Tardy
29 Furniture Store?

1 BY MR. EVANS: Your Honor, he just read the
2 question and the answer. This is--

3 BY THE COURT: That is sustained, and it is
4 also not proper redirect. His questions on
5 cross-examination were where he took him, not what
6 he made in any statement.

7 BY MR. LUMUMBA: Well, Judge, actually that is
8 not true. What he asked on cross-examination is
9 where he took him, and then he asked if he showed
10 him. That's what his questions were. He asked
11 both questions.

12 BY MR. HORAN: Well, he asked him did he take
13 him on Front Street, or did he ever say to him on
14 Front Street, and did this statement say it. And
15 he just read the statement.

16 BY THE COURT: Asked and answered. Move on.
17 BY MR. LUMUMBA:

18 Q. Okay, well, let me ask you this. Roy Harris was
19 the gentleman, first of all, that is hard of hearing; is that
20 correct?

21 A. He wears a hearing aid sometimes.

22 Q. Are you going to answer my question? Is Roy Harris
23 the person who is hard of hearing?

24 A. At times, yes.

25 Q. In his statement that you-- did you not look at
26 this statement when the prosecution asked you questions on
27 cross-examination? You looked at this statement; right? I
28 am asking you?

29 A. I have looked at the statement before, yes.

1 Q. Roy Harris told you he turned left at the church;
2 right?

3 BY MR. EVANS: Your Honor, again what I asked
4 him to do was tell me where Roy Harris carried them
5 and showed him he went.

6 BY MR. LUMUMBA: He also asked him to tell him
7 what Roy Harris said.

8 BY THE COURT: Well, that is not what I
9 recall, and I sustain the objection.

10 BY MR. LUMUMBA: Well, just to make the record
11 clear, Judge, the statement clearly indicates--

12 BY MR. EVANS: --Your Honor, this is improper,
13 and I object.

14 BY THE COURT: I sustain the objection. You
15 have been over this. I mean this is all in the
16 record by Mr. Harris, and I think he has even
17 testified to it somewhere.

18 BY MR. LUMUMBA:

19 Q. Do you know, since you were asked questions about
20 Mr. Harris-- well, let me ask you this. Was Ms. Bingham
21 present at the time that Mr. Harris talked to you?

22 BY MR. EVANS: Object, Your Honor. That is
23 not something we went into.

24 BY MR. LUMUMBA: He asked him about his
25 conversation with Mr. Harris. He asked him
26 specifically what Mr. Harris told him before he
27 talked about where Mr. Harris allegedly took him.

28 Q. So what I want to know is was Ms. Bingham present
29 at the time of that conversation? Do you know who Melinda

1 Bingham--

2 BY THE COURT: --You can answer that
3 question.

4 BY MR. LUMUMBA:

5 Q. Do you know Melinda Bingham is?

6 A. I sure do.

7 Q. Was she present?

8 A. Yes, she was.

9 (Defense Counsel confer briefly.)

10 Q. Did any of these witnesses that he talked to you
11 about at any time indicate that they saw Mr. Flowers inside
12 of Tardy Furniture Store?

13 A. No.

14 Q. Did any of these witnesses at any time indicate
15 that they saw Mr. Flowers with any kind of weapon?

16 A. No.

17 Q. Did any of these witnesses at any time indicate
18 that they saw Mr. Flowers on any day doing anything illegal,
19 the witnesses that you have just mentioned?

20 A. The witnesses that we have just mentioned. (Pause).

21 Q. Ms. Clemmie Fleming?

22 A. No.

23 Q. Ms. Mary Fleming, Jeanette Fleming?

24 A. No.

25 Q. Mr. Porky Collins?

26 A. No.

27 Q. Ms. Patricia Ann Hollman?

28 A. No.

29 Q. Mr. BoJack?

1	A.	No.
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3	A. No.
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6 BY THE COURT: You may return to the witness
7 room. Ladies and gentlemen, we are going to take a
8 short break.

10 (FOLLOWING THE FIRST AFTERNOON RECESS ON MARCH
11 29, 1999, THE TRIAL RESUMED IN OPEN COURT WITH THE
12 COURT, ALL COUNSEL, AND THE DEFENDANT PRESENT:)

14 JURY ENTERS COURTROOM.

16 BY MR. LUMUMBA: We would call at this time
17 Ms. Stacey Wright.

19 BY MR. LUMUMBA: Yes, sir. She is out here.

21 BY MR. LUMUMBA: She is out here with our
22 witnesses down the hall.

24 BY MR. LUMUMBA: Yeah, Stacey Wright. They
25 are outside that locked courtroom.

27 BY THE COURT: Have you been sworn. Ms.
28 Wright?

1 **BY THE COURT:** Raise your right hand.

2 **STACEY WRIGHT,**

3 a black female called to testify as a witness by the
4 Defendant, having first been duly sworn, testified as
5 follows, to-wit:

6 **BY THE COURT:** Have a seat up there, please.
7 State your name for the record.

8 **BY THE WITNESS:** My name is Stacey Wright.

9 **BY THE COURT:** If you will, please talk up,
10 ma'am, so everybody can hear you.

11 **BY THE WITNESS:** Stacey Wright.

12 **BY MR. HORAN:** Your Honor, can we approach
13 just for a minute?

14 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
15 THE JURY AS FOLLOWS:)

16 **BY MR. HORAN:** Your Honor, Mr. Lumumba can
17 correct me if I'm wrong, but I anticipate that he
18 is going to ask Ms. Wright some statements
19 regarding what Clemmie Fleming may have told her.
20 Is that correct?

21 **BY MR. LUMUMBA:** That's correct.

22 **BY MR. HORAN:** What is in the interview is
23 statements have not been-- these statements that
24 were made by Clemmie Fleming, Ms. Fleming has not
25 been approached about.

26 **BY MR. LUMUMBA:** Oh, yes.

27 **BY MR. HORAN:** Not this in here.

28 **BY MR. LUMUMBA:** Oh, yeah. I asked Ms.
29 Fleming about when did she elicit--

1 BY MR. LUMUMBA: Okay, so if he had a problem
2 with that, he should have raised--

3 BY MR. HORAN: --I don't have a problem with
4 that. The problem I have with it is when Clemmie
5 was on the stand, the only question he asked
6 Clemmie was did you tell Stacey Wright that you
7 didn't see Curtis. On all this other stuff he
8 never approached her about.

9 BY MR. LUMUMBA: Judge, that is part of the
10 statement. That's what I--

11 BY THE COURT: --Look, we ain't having none of
12 this ya, ya, he said, she said. Let's get it
13 before the jury and go. I can't remember what all
14 is said.

15 END BENCH CONFERENCE

16 DIRECT EXAMINATION BY MR. LUMUMBA:

17 Q. Yes, ma'am. Can you tell the ladies and gentlemen
18 of the jury, please, what your name is.

19 A. My name is Stacey Wright.

20 Q. And can you kind of keep your voice up a little
21 bit, Ms. Wright. Now I know how rough that is sometimes, but
22 if you lean forward just a little bit, I think that mike will
23 pick--

24 A. --My name is Stacey Wright.

25 Q. Okay, and Ms. Wright, could you tell us, please,
26 where is it that you live?

27 A. Winona, Mississippi.

28 Q. And how long have you lived in Winona?

29 A. All my life.

1 Q. Do you have a family up there - a mother, father,
2 brother, sisters, and stuff?

3 A. Yes, sir.

4 Q. What does that consist of?

5 A. Pardon me?

6 Q. What does that consist of? Who is in your family?
7 I don't want the names.

8 A. Two brothers, my mother and my father.

9 Q. Okay. And do you know a person by the name of
10 Clemmie Fleming?

11 A. Yes, I do.

12 Q. And how is it that you know Ms. Fleming?

13 A. She is an associate and a relative.

14 Q. She is a relative?

15 A. Yes.

16 Q. And an associate?

17 A. Yes.

18 Q. Okay, and how is she, how is she a relative to
19 you?

20 A. About third or fourth cousins.

21 Q. All right, I know Winona is a fairly small town; is
22 that correct?

23 A. Yes, sir.

24 Q. Now let me ask you this. Have you ever had any
25 conversations with Ms. Fleming with respect to this case and
26 Curtis Flowers?

27 A. Yes, I have.

28 Q. You just tell the ladies and gentlemen of the jury
29 what that conversation was about and what was said.

1 A. She called me sometime last year before the first
2 hearing and told me that someone had came to her house - I
3 don't know if it was the police or the sheriff - to offer her
4 some money. She testified that she had seen Curtis down at
5 Tardy's. She had said that they was going to either pay off
6 her furniture note that she had had down there at Tardy's or
7 they was going to give her some money. Evidently they didn't
8 never do it because she called me back later, was crying,
9 very hostile, and saying that she hate she did it because she
10 didn't never see Curtis down there. She know he couldn't do
11 anything like that. Those are her exact words.

12 Q. Okay, now let me ask you this, Ms. Wright. Did you
13 recently also have a conversation with her about the same
14 thing?

15 A. Yes. This was Friday on the 12th.

16 Q. Tell me what was said.

17 A. We went to get our hair fixed at a friend's house,
18 Tasha Blissett. And I was--

19 BY MR. HORAN: --Your Honor, I object to that
20 part of it. First of all, it is not in the
21 statement that has been provided in discovery.

22 **BY THE COURT:** Overruled.

23 BY MR. LUMUMBA:

24 Q. Go ahead.

25 A. We was getting our hair fixed, and I was under the
26 dryer, and she was telling my friend Tasha that she was just
27 going to tell the truth, that she did not see Curtis.

28 Q. And that was just Friday?

29 A. We had--

1 Q. --Friday?

2 A. --We had been hanging out before then. She was,
3 always talked about it, but I didn't say too much about it.

4 Q. Okay, now that is Friday. What was that?

5 A. The 12th.

6 Q. 12th, okay. Now have you, have you been offered
7 anything at all to come in here and say this?

8 A. No.

9 Q. Okay. And have you been offered a reward or
10 anything like that?

11 A. No, I haven't.

12 BY MR. LUMUMBA: I have no further questions
13 of Ms. Wright.

14 BY MR. HORAN: May I proceed, Your Honor?

15 BY THE COURT: Uh-hum.

16 CROSS-EXAMINATION BY MR. HORAN:

17 Q. Ms. Wright, is it your testimony that Ms. Fleming
18 told you these things prior to the first time that she
19 testified under oath?

20 BY MR. LUMUMBA: At a hearing.

21 BY MR. HORAN:

22 Q. At a hearing.

23 A. This was before the hearing when she told me that
24 they had called her.

25 Q. Okay.

26 A. Then after the hearing, she wanted to change her
27 testimony--

28 Q. --Let's just do them one at a time if you don't
29 mind.

1 A. Okay.

2 Q. It's your testimony that before Clemmie Fleming
3 testified previously, that you-- she made these statements to
4 you?

5 A. Some of the statements.

6 Q. And you didn't tell anybody?

7 A. No, I didn't, nobody but my mother, my family.

8 Q. But you were aware of the fact that Clemmie was to
9 testify under oath; right?

10 A. Not at the time when she first called me, when she
11 first told me about the situation--

12 Q. --I'm not asking you that. She told you these
13 things; right? According to you?

14 A. Uh-hum.

15 Q. Then at some time after that is when she testified
16 contrary to what you're telling these people here; right?

17 A. Yes.

18 Q. Is that right?

19 A. Uh-hum.

20 Q. But you didn't say anything to anybody about that?

21 A. Not to nobody out in the public.

22 Q. Okay. Are you aware of the fact, and you said that
23 Clemmie told you that-- and let me see if I got your words
24 right, that they were going to pay her bills?

25 A. Yes, a bill that she had at Tardy's Furniture
26 Store.

27 Q. All right. Are you aware of the fact that--

28 BY MR. LUMUMBA: Let us approach, please.

29 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF

1 THE JURY AS FOLLOWS:)

2 BY MR. FREELON: Your Honor, I don't know, but
3 I think they have a bill here. Now we are in the
4 same position that they were in when we had to
5 provide discovery as far as to impeach a witness.
6 We don't have that information. I don't know. But
7 I believe what he have at the podium right now is
8 information as far as a bill is concerned.

9 BY THE COURT: This lady couldn't know
10 anything about that bill and therefore couldn't
11 testify.

12 BY MR. HORAN: I just asked her if she has
13 knowledge.

14 BY MR. LUMUMBA: Clemmie has already testified
15 that the bill hasn't been paid.

16 BY THE COURT: Well, this woman can't know.

17 (Document handed to Defense Counsel.)

18 END BENCH CONFERENCE

19 BY MR. HORAN:

20 Q. Ms. Wright, are you aware of the fact that Tardy
21 Furniture was in the process of collecting on Ms. Fleming's
22 bill even after the last time that she testified?

23 A. No.

24 Q. You are not aware of that fact?

25 A. No.

26 Q. Okay, so you cannot dispute that?

27 A. (No response.)

28 Q. Can you?

29 A. I just said no, I didn't know.

1 Q. You have no knowledge that what Tardy Furniture has
2 done with her account within the last eight months?

3 A. No, I am just telling you what she told me.

4 (Mr. Horan hands another document to Defense
5 Counsel.)

6 Q. What she told you. But you are telling this jury
7 that you had knowledge that she was to testify at a hearing
8 regarding this particular matter, and you had information,
9 according to you, that she was going to lie, but you didn't
10 say anything to anybody? That's what you are telling this
11 jury?

12 A. Could you repeat that, please.

13 Q. Yes, ma'am. You are telling this jury that prior
14 to the hearing, she told you something contrary to what you
15 knew she was going to testify to, but you sat mute. You
16 didn't say a word to anybody?

17 A. I just told you my family knew. I told them about
18 it.

19 Q. Okay.

20 BY MR. HORAN: No further questions. Hold it.

21 (State's Counsel confer briefly.)

22 BY MR. HORAN:

23 Q. Ms. Wright, you know Mary Fleming?

24 A. Yes.

25 Q. Okay, now the Mary Fleming I am making reference to
26 is Clemmie's sister; right?

27 A. I guess so.

28 Q. Okay, and you and Mary, y'all have been harassing
29 and getting on Clemmie pretty regular about changing her

1 testimony, haven't you?

2 A. Oh, no. No. I got harassed by Clemmie this
3 morning when I got to court.

4 Q. That is not my question.

5 A. Well, I am just telling you. No.

6 BY MR. HORAN: No further questions. That's
7 all I have.

8 REDIRECT EXAMINATION BY MR. LUMUMBA:

9 Q. Yes, Ms. Wright, my only question is this: Did
10 someone from the Defense office, from the Defense attorneys'
11 office come to you and talk to you about this?

12 A. (Witness shakes her head.)

13 Q. Did you give a statement?

14 A. I gave my own statement.

15 Q. Okay, you gave a statement; is that correct?

16 A. Uh-hum.

17 Q. And so when you were asked about it, you did give a
18 statement. Is that correct?

19 A. Yes, sir.

20 Q. And you didn't try to cover anything up, did you?

21 A. No, sir.

22 (Defense Counsel confer briefly.)

23 Q. Do you have any relationship whatever to Curtis
24 Flowers?

25 A. No, sir.

26 BY MR. LUMUMBA: I have no further questions.

27 BY THE COURT: Is she finally excused?

28 BY MR. LUMUMBA: Yes, she is.

29 BY THE COURT: Ma'am, you are free to leave.

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WITNESS EXCUSED.

BY THE COURT: Who do you have next?

BY MR. LUMUMBA: The Defense would call Ms. Blissett, recall Ms. Blissett, Latarsha Blissett.

(CONFERENCE AT THE BENCH OUT OF THE HEARING OF THE JURY AS FOLLOWS:)

BY MR. HORAN: Hasn't he already called her once? They have already called her once.

BY THE COURT: I let him reserve the right to recall her the way the statements came in.

BY MR. HORAN: That's right. I remember.

END BENCH CONFERENCE.

LATARSHA BLISSETT,

a black female having been previously called to testify as a witness by the Defendant, and having been previously sworn, testified further as follows, to-wit:

BY THE COURT: State your name for the record, please.

BY THE WITNESS: Latarsha Blissett.

BY THE COURT: Okay.

DIRECT EXAMINATION BY MR. LUMUMBA:

Q. Ms. Blissett, I just have one question for you. You have testified already; isn't that correct?

A. Yes.

Q. Okay, and you were about to tell us before. Did you have a discussion with Mr. Johnson as it related to Curtis Flowers? Did he say something to you?

A. Yes.

Q. Just tell me what he said to you, please.

1 A. He asked me do I know what thirty thousand dollars
2 can buy.

3 Q. Right.

4 A. And I told him yes. And he asked me was Earl with
5 Curtis Flowers when he went in the store, and I told him no.
6 Earl was at work, and I don't know who went in the store.

7 Q. Did he ever say anything about Curtis in his mind,
8 what Curtis had done or had not done? Did he say anything
9 about--

10 BY MR. HORAN: --Objection.

11 Q. I'm sorry. Did he say anything about Curtis as
12 to-- did he say anything else about Curtis?

13 A. No.

14 Q. All right.

15 BY MR. LUMUMBA: I have no, I have no further
16 questions.

17 CROSS-EXAMINATION BY MR. HORAN:

18 Q. Ms. Blissett, you specifically remember the amount
19 of money, thirty thousand dollars? You remember that?

20 A. Yes.

21 Q. Okay. You are positive about that?

22 A. Yes.

23 Q. He talked to you on August the 29th, 1996, didn't
24 he?

25 A. I don't know what the exact date it was.

26 Q. You wouldn't disagree with me though, would you,
27 Ms. Blissett, that that is the day that Mr. Johnson had made
28 some notes when he talked to you?

29 A. He recorded us talking too.

1 Q. Okay. Well, if he wrote down the 29th, you
2 wouldn't disagree on his notes that that was the day, would
3 you?

4 A. (No immediate response.)

5 Q. I mean I'm not trying to be argumentative with you,
6 Ms. Blissett, but if Mr. Johnson's, if he made a record of
7 it, and you didn't write anything down, but if he made a
8 record of the 29th, you wouldn't disagree that that is the
9 date, August the 29th, that he talked to you?

10 A. I'm not sure what date it was but--

11 Q. But you wouldn't disagree with me on that, would
12 you?

13 A. I don't know.

14 Q. Let's move on. You were in school. You had just
15 started school, I believe. You were in school August 29th.
16 You testified earlier that they got you out of school?

17 A. Yes.

18 Q. All right. Are you aware of the fact that it was
19 some time after that before the amount ever got to thirty
20 thousand dollars? Are you aware of that, Ms. Blissett?

21 A. I just only knew about thirty thousand dollars.

22 BY MR. HORAN: Okay, no further questions.

23 REDIRECT EXAMINATION BY MR. LUMUMBA:

24 Q. Ms. Blissett, you don't know of your own personal
25 knowledge what Mr. Johnson knew about the reward, where it
26 was, or where it was going, do you?

27 A. Didn't know where it was going?

28 Q. Did you have any idea what Mr. Johnson knew about
29 the reward at that time?

1 A. (No immediate response.)

2 Q. You don't know what he knew about the reward, do
3 you?

4 A. I don't know if he knew about it.

5 Q. Okay. Well, you know what he told you; is that
6 right?

7 A. Yes.

8 Q. Okay, let me-- final question. I thought I heard
9 you say something about how was this-- there was some kind of
10 recording at the time?

11 A. Yes. He recorded us talking.

12 Q. Have you ever seen a copy of the tape?

13 A. No. He just mashed the button on the thing.

14 BY MR. LUMUMBA: Okay. I don't have any other
15 questions of Ms. Blissett.

16 BY THE COURT: Is she finally excused?

17 BY MR. LUMUMBA: She is excused as far as we
18 are concerned, Judge. Yes, sir.

19 BY THE COURT: You are free to go, Ms.
20 Blissett.

21 WITNESS EXCUSED.

22 BY THE COURT: Who do you have next?

23 BY MR. LUMUMBA: We at this time would call
24 Mr. Ken Pickens.

25 (Counsel confer among themselves out of the
26 hearing of the Court Reporter. Witness enters the
27 courtroom.)

28 BY THE COURT: Mr. Pickens, have you been
29 sworn?

1 BY THE WITNESS: No, sir.

2 BY THE COURT: Would you raise your right
3 hand.

4 KEN PICKENS,

5 a white male called to testify as a witness by the Defendant,
6 having first been duly sworn, testified as follows, to-wit:

7 BY THE COURT: State your name for the
8 record.

9 BY THE WITNESS: Ken Pickens.

10 DIRECT EXAMINATION BY MR. LUMUMBA:

11 Q. Mr. Pickens, could you tell the ladies and
12 gentlemen of the jury your name, please.

13 A. Ken Pickens.

14 Q. And Mr. Pickens, where is it that you're from?

15 A. Winona.

16 Q. And do you work in Winona also?

17 A. Yes, sir.

18 Q. What kind of work do you do?

19 A. Body repair.

20 Q. Okay. Now we have had an opportunity to talk once
21 or twice before; is that correct?

22 A. Right.

23 Q. Okay, and I want to direct your attention, Mr.
24 Pickens, are you married?

25 A. Yes, sir.

26 Q. Have a family?

27 A. Yes, sir.

28 Q. And what does that consist of?

29 A. One girl.

1 Q. Okay. And how long have you been working up there
2 in Winona?

3 A. Six years at the body shop--

4 Q. --Okay, you work-- I'm sorry?

5 A. Six years at the body shop.

6 Q. You work at a place called Weeds Body?

7 A. Yes, sir.

8 Q. Now what I would like to ask you, Mr. Pickens, is
9 two inquiries basically. Did you have an opportunity to see
10 a young lady who you now know to be Jeanette Fleming? Did
11 you see her on or about the 16th of July, '96?

12 A. Yes, sir.

13 Q. Okay, and do you know what you were seeing her
14 about?

15 A. Yes, sir.

16 Q. What was that?

17 A. She had brought her car to our shop the morning,
18 that morning to have a windshield replaced.

19 Q. Now before you can get a windshield, do you order a
20 windshield when somebody wants a windshield replaced?

21 A. Yes.

22 Q. And when the windshield is ordered-- I don't want
23 this to sound-- at what point can it be ordered? Before or
24 after you know that you need one?

25 A. Any time.

26 Q. Okay.

27 A. If they are willing to bring their car in and leave
28 it an extra day, we can have one shipped the next day.

29 Q. I understand. But now I'm going to show you what

1 is marked as-- well, they marked it as a State Exhibit for
2 identification purposes. I think this is 105 for
3 identification purposes. Do you see that?

4 A. Yes, sir.

5 Q. Okay, and what is that? Tell us, the ladies and
6 gentlemen.

7 BY MR. LUMUMBA: The State has no objection to
8 this exhibit.

9 BY MR. EVANS: None at all.

10 BY MR. LUMUMBA: Okay, we are going to go
11 ahead and mark it in evidence.

12 BY MR. HORAN: Your Honor--

13 BY THE COURT: --You want to do that first
14 before he testifies to it?

15 BY MR. HORAN: To clean the record up, I don't
16 mind if he attaches the other two pages to the
17 exhibit that has been previously marked for
18 identification purposes, so it'll just be one
19 exhibit.

20 BY MR. LUMUMBA: Yeah, one exhibit. That's
21 all it is.

22 BY THE COURT: Okay, has he got it?

23 BY MR. LUMUMBA: Yes.

24 BY THE COURT: Okay, if you would hand it to
25 the Court Reporter and let's mark it. That is an
26 exhibit of how many pages now?

27 BY MR. LUMUMBA: Three pages.

28 BY MR. HORAN: Three pages.

29 BY MR. LUMUMBA: I think he can explain what

1 they are.

2 (WEED BROTHERS INVOICE DATED 7/16/96
3 PREVIOUSLY MARKED AS STATE'S EXHIBIT S-105 FOR
4 IDENTIFICATION WAS NOW ADMITTED IN EVIDENCE AT THE
5 REQUEST OF THE DEFENDANT.)

6 BY MR. LUMUMBA:

7 Q. Mr. Pickens, what is that that is in your hand?

8 A. That's a receipt from Port City Glass for a
9 windshield.

10 Q. Okay, was that the receipt for the windshield that
11 was placed on her car?

12 A. I wouldn't know, unless you look at the, the number
13 up.

14 Q. Okay, what time was that receipt ordered or receipt
15 for that windshield?

16 A. 8:02 A M, the 16th of the 7th month of '96.

17 Q. Okay, I see. So did you order any other-- were you
18 asked to look for receipts from any glass ordered that
19 morning or anywhere about that morning? Were you asked for
20 that?

21 A. No.

22 Q. Okay. So do you have any other receipts from any
23 other orders that morning?

24 A. No, it would have been on this receipt.

25 Q. And when I talked to--

26 A. --They will put more than one on one receipt.

27 Q. Okay, so you, so what you are telling me is--

28 BY MR. HORAN: --Your Honor, he needs to.

29 BY MR. LUMUMBA: Okay.

1 **BY THE COURT:** Don't lead him.

2 **BY MR. LUMUMBA:**

3 Q. Do you know if this receipt relates to Ms.
4 Fleming? Do you have any idea?

5 A. No.

6 Q. Okay.

7 A. No proof.

8 Q. You don't really don't know; is that right?

9 A. Right.

10 Q. Okay, now let me ask you this. Do you know that--
11 this has here Weeds Brothers Body Shop. What is this? The
12 second page of it?

13 A. That's an estimate.

14 Q. And how much is that estimate for?

15 A. \$374.50.

16 Q. Okay, does that have a date on it?

17 A. No, sir.

18 Q. So you don't know what date that occurred?

19 A. No, sir.

20 Q. That could have occurred any day?

21 A. Right.

22 Q. Didn't have to occur on the 16th?

23 A. Didn't have to, but I don't normally write
24 estimates, and that's the only day that I wrote an estimate.

25 Q. Well, did you order, did anybody order any glass
26 that day?

27 A. I don't know if it was ordered the 16th or at the
28 end of the 15th.

29 Q. Okay, do you know whether that glass there that is

1 ordered would fit the kind of car that Ms. Fleming had?

2 A. No.

3 Q. You don't know that?

4 A. I don't know by looking at this number.

5 Q. Okay, how would you have to find out?

6 A. Look it up in a body repair book.

7 Q. And did we ask you to do that?

8 A. Have you asked me when?

9 Q. Yes.

10 A. Yes.

11 Q. And did you do it?

12 A. No. I did not have access to the book this
13 morning.

14 Q. Okay.

15 A. Short notice.

16 Q. Okay, well, let me ask you this here. When we
17 spoke, I asked you if you could recall on Ms. Fleming coming
18 to your facility. Is that correct?

19 A. Yes, sir.

20 Q. And you indicated to me that you thought that you
21 could recall at some point in time; right?

22 A. Yes, sir.

23 Q. And let me ask you this. Where did she park when
24 she came?

25 A. She parked at the north end of our parking lot.

26 Q. Okay, I'm going to see if we can-- I don't know if
27 this is possible to show on this map. Okay, let me ask you
28 this, and I'm going to ask you to step in front of the jury,
29 if you can recognize something for me. You said she parked

1 at the north end of the parking lot. Is that correct?

2 A. Right.

3 Q. Do you see the area here which would be
4 approximately where your shop would be on this map?

5 A. (Pause) It's not very clear.

6 Q. Okay.

7 A. But it should be-- it's on Carrollton Street,
8 Carrollton Avenue.

9 Q. It's on Carrollton Avenue?

10 A. Right. Directly behind Tardy Furniture.

11 Q. If this blue square was supposed to be Tardy
12 Furniture-- actually Tardy's doesn't take up the whole block
13 in real, does it?

14 A. No.

15 Q. Okay, but let's assume that it is Tardy Furniture
16 in this blue square.

17 A. All right.

18 Q. Then would your facility be right back here?

19 A. No, it would be -- if this was the back of Tardy
20 Furniture, our shop is directly behind it.

21 Q. This is supposed to be the back of Tardy
22 Furniture.

23 A. This right here? This line?

24 Q. This blue line, the back of this blue line is
25 supposed to be the back of Tardy Furniture.

26 A. Okay.

27 Q. Then where would your shop be?

28 A. It should be located right there.

29 Q. Let's share this with the ladies and gentlemen of

1 the jury. Okay.

2 A. Do you want me to step down?

3 Q. Yeah, please.

4 Q. Okay, now this blue black-- we are assuming that
5 this blue box is Tardy Furniture; okay? And we are assuming
6 that this is the rear of Tardy Furniture. Do you see that?
7 For the purposes of the ladies-- for the record, for purposes
8 of the record, I'm going to show the ladies and gentlemen of
9 the jury. I'm pointing to a box which I think has already
10 been placed on here, Judge. And then when I say, when I am
11 pointing to the rear, I am pointing toward the top of that
12 box. Is that correct, Mr. Pickens?

13 A. Right.

14 Q. And that is supposed to be the rear of Tardy
15 Furniture. You recognize Carrollton Street; is that correct?

16 A. Right.

17 Q. Okay, and there is a-- and you know between your
18 business and Tardy Furniture, there is a street that runs
19 between you; is that correct?

20 A. Right.

21 Q. What is that called?

22 A. I believe it's Vine Street.

23 Q. Vine Street, okay. And your business is where, for
24 the ladies and gentlemen of the jury's benefit?

25 A. Should be right there (Witness pointing.)

26 Q. Well, let's assume that this is a street,
27 Carrollton. Say this is the south side of the street and
28 this is the north side of the street. I know these one lines
29 sometimes don't make it, but your building is actually on the

1 north side of the street, isn't it?

2 A. Right, on the north side of Carrollton Avenue.

3 Q. Okay, so would your business be right around in
4 here?

5 A. Right.

6 Q. I don't think there is any real disagreement about
7 that.

8 BY MR. HORAN: No.

9 BY MR. LUMUMBA:

10 Q. You are right behind Tardy's; is that right?

11 A. Right.

12 Q. Okay, now let me ask you this too. Just for the
13 purposes of the ladies and gentlemen of the jury, it's really
14 somewhere right around where this "X" is. Isn't that true?

15 A. Right.

16 BY MR. HORAN: Your Honor--

17 BY MR. LUMUMBA: Okay. I'm just--

18 BY MR. HORAN: --I know he is trying to
19 establish the locations, but he is leading and I
20 don't--

21 BY THE COURT: Well, it is leading, but he has
22 to to develop that testimony. I will let him do
23 that.

24 BY MR. LUMUMBA:

25 Q. I have got my finger right around the "X." Right?

26 A. Yes, sir.

27 Q. Okay, now don't move yet. I want to, just a couple
28 of other questions.

29 (Mr. Lumumba gets Exhibit S-109 and brings it

1 in front of the jury.)

2 Q. Okay, now we-- okay, and what you were saying-- by
3 the way, you didn't see anybody -- do you see that gentleman
4 over there?

5 A. Yes, sir.

6 Q. Do you see him? You didn't see him come running
7 through there that day, did you?

8 A. No, sir.

9 Q. Okay, and you work there; right?

10 A. Right.

11 Q. In and out all the time?

12 A. Right.

13 Q. You didn't see him come running through there?

14 A. No.

15 Q. Okay, well, let me ask you this question. Okay,
16 now let me ask you this here.

17 **BY THE COURT:** How about letting him sit back
18 on the witness stand.

19 BY MR. LUMUMBA:

20 Q. Okay, go ahead and sit down.

21 A. (Witness resumes witness stand.)

22 Q. Now if I'm not mistaken, where in relationship to
23 Vine Street was, where in relationship to Vine Street, and
24 that is the street that runs between Tardy and your business;
25 right?

26 A. Right.

27 Q. Where in relationship to Vine Street was Ms.
28 Fleming parked, her car parked?

29 A. It was on the west side, west side of Vine Street.

1 Q. Okay, the west side of Vine. That would have been
2 the side of Vine Street the furthest away from Tardy's?

3 A. Right.

4 Q. Okay. And if you, if I-- describe Vine Street. Is
5 that a real big street, or is it kind of like an alley or
6 what?

7 A. It's like an alley.

8 Q. Okay. When I came up and talked to you, did we
9 stand right there in that spot?

10 A. We stood at the spot where she had parked her car.

11 Q. Okay. And as we stood there right there at the
12 spot, did I ask you to tell me which direction she went when
13 she left?

14 A. Yes, sir.

15 Q. And this was almost, months ago when I asked you
16 this; right?

17 A. About a year ago.

18 Q. Okay. And what did you tell me?

19 A. I told you that I thought she went north.

20 Q. Now if she went north, would that be toward
21 Carrollton or away from Carrollton?

22 A. Away.

23 Q. Pardon?

24 A. Away.

25 Q. Now did I tell you which way to tell--

26 BY MR. HORAN: --Your Honor--

27 BY MR. LUMUMBA:

28 Q. Did I say anything to you about--

29 BY MR. HORAN: --He has got to testify about

1 what he saw and things like that, not what Mr.
2 Lumumba told him. This is his witness.

3 **BY THE COURT:** That is true. Let him do the
4 testifying.

5 BY MR. LUMUMBA: Okay.

6 BY MR. LUMUMBA:

7 Q. Was anything said to you prior to me asking you
8 that question about which direction she went in? Did I say
9 anything to you about which direction she went in?

10 A. No.

11 BY MR. LUMUMBA: Excuse me, Judge. I seem to
12 be missing something. (Long pause.)

13 Q. Well, Mr. Pickens, now did you tell me at the time
14 that you thought she went north, or did you just say she went
15 north?

16 A. I believe I told you I thought she did because I
17 couldn't remember.

18 Q. You can't remember now; right?

19 A. I couldn't remember at all because I didn't watch
20 to see which way she left.

21 Q. No, but what I'm saying at the time that you saw
22 her turn, which direction did she turn in? That's my
23 question.

24 A. I'm not, I'm not sure. I'm not positive that she
25 went north.

26 Q. You told me at that time; right?

27 A. I told you, I believe I told you that I thought she
28 went north.

29 Q. But if I was to play the tape for you, would that

1 refresh your recollection? I was taping the conversation;
2 right?

3 A. You could play it, but it probably wouldn't change
4 my mind.

5 Q. Okay, well, I'm not saying it would change your
6 mind. Would that refresh your recollection as to what you
7 said?

8 A. Yes, it would.

9 BY MR. LUMUMBA: Judge, can we have a brief
10 set up time on the tape? Can we approach, please?

11 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
12 THE JURY AS FOLLOWS:)

13 BY MR. HORAN: I don't mind him reading it,
14 but why would we play the whole tape?

15 BY THE COURT: I would rather not play the
16 whole tape either. Just the part that you want to
17 know, that you want to talk about.

18 BY MR. HORAN: There is something in here--

19 BY MR. EVANS: --Why don't we use the
20 transcript like we did with all the other stuff?

21 BY MR. LUMUMBA: Well, I can't find my
22 transcript. Any of you guys have--

23 BY MR. HORAN: --Well, you talked to him three
24 or four times according to him.

25 BY MR. LUMUMBA: I talked to him twice.

26 BY MR. HORAN: Let me get the other one.

27 BY THE COURT: He has really answered the
28 question.

29 BY MR. EVANS: Yeah, he has covered it.

1 BY MR. LUMUMBA: Well, Judge, he didn't tell
2 me he thought she went north. He told me she went
3 north, and I mean since then he is now-- and I'm
4 not trying to jump him, but I just--

5 BY THE COURT: --I know that but I mean.

6 (Mr. Horan returns with another statement.)

7 BY MR. LUMUMBA: Can I use that for a minute?
8 It's right here.

9 BY MR. HORAN: Right there. And I don't mind
10 you--

11 BY MR. LUMUMBA: --Okay, that's all I want.

12 BY MR. HORAN: Those four right there; that's
13 all.

14 BY MR. LUMUMBA: Okay. What are you worried
15 about?

16 BY MR. HORAN: I just don't want to go through
17 this stuff for nothing.

18 BY THE COURT: Right. Let's limit it to
19 that. That's all we were going to play the tape
20 for anyhow.

21 BY MR. LUMUMBA: Okay.

22 END OF BENCH CONFERENCE

23 BY MR. LUMUMBA:

24 Q. We ascertained a transcript of the tape. I wonder
25 if you could share this with me.

26 A. (Pause while the witness reads.)

27 Q. Okay, do you see here where we have Mr. Lumumba?
28 That is-- you understood that to be my name; right?

29 A. Yes, sir.

1 Q. "Do you know whether it was a lady or a man that
2 brought the vehicle in?" You said at that time it was a
3 lady. Is that correct?

4 A. Right.

5 Q. "At the time the lady brought the vehicle in, did
6 she leave driving or walking or how?"

7 A. "Walking."

8 Q. Walking. "In which direction did she go?"

9 A. "North."

10 Q. Now there you don't say you thought she went north,
11 do you?

12 A. No, not when it was recorded.

13 Q. I understand. In fact, you don't express any more
14 uncertainty about the direction that she went in than the
15 fact that she was walking, do you, on the tape?

16 A. On the tape, no.

17 Q. Okay, well, let me ask you this.

18 (Mr. Lumumba hands transcript back to Mr.
19 Horan.)

20 Q. If she went north, would she have been heading
21 toward or away from Carrollton?

22 A. Away.

23 Q. Huh?

24 A. Away.

25 Q. If she went north, would she be heading toward or
26 away from Coast to Coast?

27 A. Toward.

28 Q. Now just one last question. We talked I think it
29 was last week at the very last date that you were up here

1 last week; is that correct?

2 A. Right. Friday.

3 Q. I showed you that same exhibit, or I showed you
4 what is now marked as an exhibit. This order form or this, I
5 guess that's a receipt?

6 A. Receipt.

7 Q. Okay. Did you not tell me at that time that that
8 was the receipt for her glass associated with her car?

9 A. Repeat the question.

10 Q. Did you not tell me that that was the receipt for
11 her glass associated with her car?

12 A. I am sure it is, but I'm not, I cannot prove it.

13 Q. Oh, okay; I'm sorry. I'm sorry. So you were just
14 basically, you were telling me something you couldn't prove
15 but you felt certain?

16 A. Right.

17 Q. I see.

18 A. Because I signed the ticket.

19 Q. Okay. What time does it have on there?

20 A. 8:02 A M.

21 Q. And so if she never contacted-- and I'm just trying
22 to find out about -- you can't order that for her car until
23 you know that her car needs it?

24 BY MR. HORAN: Your Honor.

25 BY MR. LUMUMBA:

26 Q. Can you order that for her car before you know or
27 from any source that she needs a window?

28 A. No, she wouldn't have had me to order if she didn't
29 need it.

1 Q. So she has to let you know about that first?

2 A. Right. Either me or someone else.

3 Q. And in this case that would have had to have been
4 before 8:02 A M on that day. Is that correct?

5 A. Or the following day-- the day before.

6 Q. Okay. The day-- it would either have had to be on
7 the day before or 8:02 that day?

8 A. Right.

9 Q. Okay. So I am just trying to check the policy.
10 Okay. If somebody says that they came in and called
11 immediately and came down in 5 minutes to your spot after
12 reporting they needed a window. Right?

13 A. Right.

14 Q. Or needed a window. Then that would mean that you
15 could not order the window until after they called; correct?

16 A. Right.

17 Q. And in that case it would have been sometime before
18 8:02 that they would have had to call; is that correct?

19 A. Right.

20 Q. Assuming that that is even from that day; is that
21 correct?

22 A. Right.

23 Q. But you don't even know that for sure. You don't
24 even know that that receipt is from that day?

25 A. No, it-- it has got the 16th on it.

26 Q. But I am asking you do you know, do you know that
27 is really associated with her car? I thought you just told
28 me you don't know.

29 A. No.

1 Q. I'm sorry. I got confused. We really don't even
2 know that, do we?

3 A. No.

4 Q. Okay. Would it also be safe to say that--

5 BY MR. HORAN: --Your Honor, he is asking this
6 witness would it be safe to say--

7 BY MR. LUMUMBA: --Okay, I'm going to rephrase
8 that.

9 BY MR. LUMUMBA:

10 Q. What is the second page of this exhibit?

11 A. That is an estimate.

12 Q. And that estimate, does it have a date and time on
13 it?

14 A. No, it does not.

15 Q. So is there anything about the estimate that would
16 say it was that day?

17 A. No, besides being my handwriting.

18 Q. Well--

19 A. And I normally don't write estimates unless the
20 boss is not there, and that is the only day that he was not
21 there.

22 Q. That is the only day the whole year he wasn't
23 there?

24 A. I don't know about the whole year, but that is
25 probably the only estimate I wrote that year.

26 Q. That is the only estimate you wrote that year?

27 A. Because I don't write estimates normally.

28 Q. Did you put down the date that you wrote that only
29 estimate?

1 A. No.

2 Q. Okay. And did you put down who it was for?

3 A. Yes.

4 Q. Okay.

5 A. But that is not my handwriting. That name is not
6 my handwriting. Somebody scratched my handwriting out and
7 put another name down.

8 Q. What is that name?

9 A. I don't have any idea.

10 Q. That is not Jeanette Fleming, is it?

11 A. No, it's not. It's not my handwriting.

12 Q. Now we do on the third part of this have a receipt
13 for something, don't we?

14 A. Right.

15 Q. What is that receipt? Who is that receipt for?

16 A. That's where she paid \$325.00 on her account.

17 Q. And what day was that on?

18 A. The 19th of the same month.

19 Q. The 19th of July?

20 A. Right.

21 Q. So is there anything in this exhibit that you, that
22 other than the first page that has the 16th on it at all?

23 A. That's-- no.

24 Q. And then the first page, you are telling me that
25 you cannot say without checking the book that that even
26 relates to that car; is that right?

27 A. Right.

28 Q. And so the one thing that does have a date on it
29 says what date?

1 A. The 19th. But the owner wrote that receipt. I
2 didn't.

3 Q. Okay.

4 (Defense Counsel confer briefly.)

5 BY MR. LUMUMBA: Okay, I have no further
6 questions right now, Judge.

7 CROSS-EXAMINATION BY MR. HORAN:

8 Q. Mr. Pickens--

9 BY MR. LUMUMBA: --I do have one question.
10 I'm sorry. He can stay right there. I don't want
11 to interrupt.

12 BY MR. HORAN: No, I will go back here.

13 BY MR. LUMUMBA: One question.

14 FURTHER DIRECT EXAMINATION BY MR. LUMUMBA:

15 Q. Do you have any way of knowing what Jeanette saw or
16 didn't see on this particular day?

17 A. No, sir.

18 CROSS-EXAMINATION BY MR. HORAN:

19 Q. Let's clear this up, Ken, if we can, Mr. Pickens.
20 This is the estimate that you wrote on the 16th of that
21 month, the day that the murders occurred. Right?

22 A. Yes.

23 Q. You know that, don't you?

24 A. Right.

25 Q. And you don't know why that was scratched out. You
26 don't know whether that McArthur Buford would have been
27 responsible for busting out Jeanette Fleming's windshield or
28 not, would you?

29 A. No, I don't have any idea--

1 Q. --Okay, but you wrote all this estimate, and you
2 don't know anything about all that, do you?

3 A. No. That is-- my handwriting was scratched out.

4 Q. All right, you wrote that on the 16th?

5 A. Right. That is my handwriting.

6 Q. And you wrote that on the 16th. That's when you
7 wrote that estimate; right?

8 A. Right.

9 Q. And she didn't pay for it the same day she brought
10 it in, did she?

11 A. Doesn't appear to be.

12 Q. Okay, she paid for--

13 A. --because I know the car stayed--

14 BY MR. LUMUMBA: --Whoa, whoa. Judge, he said
15 it does not appear to be. If he doesn't know, I
16 would ask that that question and answer--

17 BY MR. HORAN: --When is the receipt?

18 BY THE COURT: For the record, you have got
19 the written record in there.

20 BY THE WITNESS:

21 A. It's for the 19th.

22 Q. Okay.

23 BY MR. LUMUMBA: But nothing says that she
24 brought it in on the 16th, does it? The only thing
25 it says is she paid for it the 19th.

26 BY THE COURT: Well, that's what's he asked
27 him. That was what you objected to, when he paid.

28 BY MR. HORAN:

29 Q. I want to get to this north direction. You said

1 something that was interesting during direct examination.

2 You said that, you said north on the tape, Mr. Pickens, and I
3 talked to you just briefly the other day, did I not?

4 A. Right.

5 Q. And I didn't suggest that you not testify to the
6 truth, did I, Mr. Pickens?

7 A. No, sir.

8 Q. And I didn't-- I asked you very few questions;
9 right?

10 A. Right.

11 Q. And I asked you about this direction thing, and you
12 told me, said that, you know, I got the keys; I turned and
13 went in?

14 A. Right.

15 Q. You really weren't paying attention which
16 direction?

17 A. No.

18 Q. And I said, well, what about this north? You know,
19 you said north on the statement. I made something to that
20 effect reference; right?

21 A. Right.

22 Q. And you said he kept on and on and on and on and on
23 and on and on about she had to go north, and she had to go
24 north. That's what you told me, wasn't it? That is kind of
25 what Mr. Lumumba was doing outside that day, wasn't he?

26 A. Uh, I don't remem--

27 Q. --I mean I asked you and you said--

28 BY MR. LUMUMBA: --Excuse me. Could he answer
29 the question, please?

1 BY MR. HORAN: Sure, he can.

2 BY THE COURT: Yeah, let him answer the
3 question.

4 BY THE WITNESS:

5 A. Repeat the question.

6 Q. You told me that Mr. Lumumba had asked you a number
7 of times which direction she went in; right?

8 A. Before the recording.

9 Q. Right, and you told him at that time you really
10 weren't sure?

11 A. I really wasn't sure, but I thought she went north.

12 Q. Right. And you told him that on numerous occasions
13 prior to the time he cut the tape on; right?

14 A. Right.

15 Q. And you are not sure today?

16 A. I did--

17 Q. --You are not telling this jury you know she went
18 north. You really weren't paying attention--

19 A. --I didn't watch her.

20 Q. --where Ms. Fleming was going?

21 A. No. I was very--

22 Q. --That wasn't your business.

23 A. I was very busy that morning. I didn't have time
24 to watch her.

25 Q. All right. But you know for sure that in that
26 morning, on that morning, the day these murders occurred, she
27 dropped that car off?

28 A. Right.

29 Q. Right behind Tardy Furniture Store?

1 A. Right.

2 BY MR. HORAN: Okay. No further questions.

3 BY MR. LUMUMBA: Can I see that?

4 BY MR. EVANS: Can you see what?

5 BY MR. LUMUMBA: The statement.

6 BY MR. HORAN: Which one?

7 BY MR. LUMUMBA: This is it.

8 REDIRECT EXAMINATION BY MR. LUMUMBA:

9 Q. Mr. Pickens, let me ask you this. Did at any
10 time-- had you ever seen me before in your life?

11 A. No.

12 Q. Before that day?

13 A. No.

14 Q. Okay. And at any point in time did I tell you what
15 to say on the tape and what not to say on the tape?

16 A. No.

17 Q. Okay. And according to this - and we can listen to
18 the tape if we need to - what direction did you say she went
19 in?

20 A. I said she went north.

21 Q. Do you express any doubt on the tape?

22 A. I don't, I don't remember. I don't remember what I
23 said.

24 Q. Okay--

25 A. --because we had went over it three or four or five
26 times.

27 Q. So we need to read it? We need to hear it then?

28 A. Well, I told you a little while ago what the paper
29 had. If that's what the tape says, that's what the tape

1 says.

2 BY MR. LUMUMBA: Judge, I would ask an
3 opportunity to play the tape.

4 BY MR. HORAN: Your Honor, he has not denied
5 making the statement--

6 BY THE COURT: --He has given a complete
7 answer to this.

8 BY MR. LUMUMBA: Well, that is my request.

9 BY THE COURT: I understand. I didn't mean it
10 that way. What I'm saying is he has given a
11 complete answer to it. I think he has explained it
12 and everything else.

13 BY MR. LUMUMBA: Okay.

14 BY MR. LUMUMBA:

15 Q. When is the first time you were asked about where,
16 when she had come back? When is the first time you were
17 asked that question? I think the date that we were talking
18 is--

19 BY MR. HORAN: Your Honor, I mean in the
20 interest of brevity, I didn't go into when the
21 first time he was asked about anything. I went
22 into what he told Mr. Lumumba.

23 BY THE COURT: What was the question?

24 BY MR. LUMUMBA: The question is he went into
25 a series of questions about what day this was;
26 right? And I am asking questions about what day
27 this was. He says you know for certain this was
28 the day that--

29 BY THE COURT: Go ahead.

1 BY MR. LUMUMBA: Can I see the statement
2 again, please?

3 BY MR. HORAN: Which one? Your statements?

4 BY MR. LUMUMBA: Have you got another
5 statement?

6 BY MR. HORAN: No. The receipts is all. You
7 got those in discovery.

8 BY MR. LUMUMBA:

9 Q. Okay, do you recall what date we talked?

10 A. No.

11 Q. What date does that say?

12 A. September the 4th, 1998.

13 Q. You wouldn't dispute that day, would you?

14 A. No.

15 Q. Before that day, had you talked to anybody about
16 this case if you recall?

17 A. I had--

18 Q. --Talked to anybody from the police or the
19 prosecution or anybody else?

20 A. I had been questioned. I don't know if it was the
21 day of the murder or a day or two after from-- I know the
22 Sheriff come by and talked to everyone that worked there and
23 someone else, but I don't remember who.

24 Q. Do you remember giving any kind of taped statement
25 or written statement to the Sheriff?

26 A. No.

27 Q. Okay.

28 (Defense Counsel confer.)

29 Q. Oh, okay, excuse me. You are saying that, yeah, I

1 think that-- just one other question. Actually, do you
2 recall that once we talked on tape, that you talked to your
3 boss and get some information from him? I'm not asking you
4 what the information was, but I'm saying did you talk to him
5 to get some information from him?

6 A. I had talked to him to try to remember whether I
7 ordered the-- we were trying to find out who ordered the
8 glass, whether I did or he did the day before.

9 Q. Okay, I understand. But in any event, that really
10 didn't refresh your mind that much; right?

11 A. No.

12 Q. But just so you can get on what you felt after you
13 talked to the boss, I taped you again to say whatever else
14 you had to say; isn't that correct, after you talked to the
15 boss?

16 A. I believe you did.

17 Q. Okay. Now looking at that second tape--

18 BY MR. HORAN: --Your Honor, I didn't go into
19 any of this.

20 BY THE COURT: That is improper redirect.

21 BY MR. HORAN: I hate to keep objecting in
22 front of the jury about things, but we are trying
23 to move this matter along.

24 BY MR. LUMUMBA: May I approach? May I
25 approach, Judge?

26 BY THE COURT: Uh-hum.

27 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
28 THE JURY AS FOLLOWS:)

29 BY MR. LUMUMBA: Uh-uh. He said he told him.

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 He stated on cross that he was uncertain about the
2 date, and he is still uncertain and he was
3 uncertain then. Here is another on the second
4 tape, right to know what you are looking up. In
5 other words, he says on the second tape-- look.

6 **BY THE COURT:** I see where you are talking
7 about.

8 BY MR. LUMUMBA: What I am concerned about is
9 right here, Judge. That's the only thing I want to
10 get in, and I think it is clearly something--

11 **BY THE COURT:** --Let me read it.

12 BY MR. LUMUMBA: Okay.

13 (Pause while the Court reads.)

14 BY MR. LUMUMBA: That's all I want to cover.

15 BY MR. HORAN: Judge, as I understand--

16 **BY THE COURT:** --It's one question and one
17 answer.

18 BY MR. HORAN: (Mr. Horan reads the question
19 and answer but not loud enough to be audible to the
20 Court Reporter.)

21 **BY THE COURT:** You can ask that.

22 BY MR. HORAN: I don't care.

23 END BENCH CONFERENCE

24 BY MR. LUMUMBA:

25 Q. Referring to the transcript of the second tape in
26 order to avoid actually playing the tape, does it, in fact,
27 not say, "Okay, and you do also know," - now this is Mr.
28 Lumumba; that's what it says here; right?

29 A. Right.

1 Q. "And okay, you do also know that she walked in the
2 direction that you indicated when you talked to you before?"
3 Is that correct? And your answer to that was, "Yes." Is
4 that correct?

5 A. Right.

6 Q. And here it says, "And you also know that she
7 walked in that direction?" Right?

8 A. Right. That's what it says.

9 Q. And it says, "Yes."

10 A. Right.

11 **BY THE COURT:** Anything further of this
12 witness?

13 BY MR. LUMUMBA: I have nothing further of
14 this witness, Judge.

15 **BY THE COURT:** Is he finally excused?

16 BY MR. HORAN: He is finally excused as far as
17 the State.

18 **BY THE COURT:** You are free to go, Mr.
19 Pickens.

20 WITNESS EXCUSED.

21 **BY THE COURT:** Who do you have next?

22 BY MR. LUMUMBA: At this time we would call
23 Ms. Moore. Ms. Moore, her name is, I think it's
24 Mary Sue Moore. Can we approach while she is
25 coming about scheduling?

26 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
27 THE JURY AS FOLLOWS:)

28 BY MR. LUMUMBA: I anticipate the next two
29 witnesses, two or three witnesses are probably

1 going to be short. I anticipate that so I mean--

2 **BY THE COURT:** --Yeah, I'm going to take them.

3 BY MR. LUMUMBA: Okay.

4 **BY THE COURT:** We will stay and take them. I
5 anticipate going a while.

6 BY MR. LUMUMBA: Oh, you do? Good.

7 END BENCH CONFERENCE.

8 (Witness enters courtroom.)

9 **BY THE COURT:** Come up here, ma'am. Have you
10 been sworn?

11 BY THE WITNESS: No, sir.

12 **BY THE COURT:** Would you raise your right
13 hand.

14 **MARY SUE MOORE,**

15 a black female called to testify as a witness by the
16 Defendant, having first been duly sworn, testified as
17 follows, to-wit:

18 **BY THE COURT:** Have a seat up there, please.
19 State your name for the record.

20 BY THE WITNESS: Mary Sue Moore.

21 DIRECT EXAMINATION BY MR. LUMUMBA:

22 Q. Okay, Ms. Moore, can you please state your whole
23 name again, please.

24 A. Mary Sue Moore.

25 Q. And could you tell the ladies and gentlemen of the
26 jury where is it you reside?

27 A. 168 Poorhouse Road in Winona, Mississippi.

28 Q. And how long have you lived in Winona, Mississippi?

29 A. All my life.

1 Q. Now do you know a person by the name of Connie
2 Moore?

3 A. Yes.

4 Q. And who is Connie Moore if you can tell me?

5 A. That's my sister.

6 Q. And where does she live back in 1996 in July of
7 that year?

8 A. She stayed in the project.

9 Q. Okay. Now does Connie have any children?

10 A. Yes.

11 Q. And what children does she have?

12 A. She have Marcus, Lemarcus, Brittany and Marissa.

13 Q. She has-- now I am particularly, could you repeat,
14 please, first the first two children you said.

15 A. She have Lemarcus, Marcus, Brittany and Marissa.

16 Q. Is the oldest child named Marcus?

17 A. Yes, it is.

18 Q. And the second oldest child named Lemarcus?

19 A. Right.

20 Q. Okay. Now what I would like to do is to ask you,
21 and I am focusing on basically the second oldest-- the first
22 oldest child. Okay. Did he ever at any point in time live
23 with Connie?

24 A. Yes, he did.

25 Q. And are you familiar with whether or not he ever
26 had any Fila Grant Hill Fila shoes while he was living with
27 Connie?

28 A. Yes.

29 Q. And share that with me, please.

1 A. Well, he had been talking about them when they
2 first come out, and he told his mother that he wanted some,
3 and she had bought him some.

4 Q. Now do you know whether or not -- about how old was
5 this child back then?

6 A. He was about 11.

7 Q. Okay. And is there anything about his feet-- about
8 what size were they?

9 A. It was between ten and a half and eleven.

10 Q. And how do you know that?

11 A. Because he used to stay with me for a while off and
12 on and on the weekends.

13 Q. Now at any point in time have you ever seen Curtis
14 himself wearing Grant Hill Fila shoes that you actually saw?

15 A. No, I didn't.

16 (Defense Counsel confer briefly.)

17 Q. Do you have any children yourself?

18 A. Yes, I do.

19 Q. And do you have any child Marcus' age?

20 A. Yes.

21 Q. And what is his name?

22 A. Antonio Moore.

23 Q. Is there any relationship between him and Marcus?

24 A. Yes. They are first cousins.

25 Q. Okay, do they spend any time together?

26 A. Yes, they do.

27 (Defense Counsel confer briefly.)

28 Q. As to your own son, what age was he?

29 A. He was 11.

1 Q. Okay. And how about his shoe size? Did he grow a
2 lot, or tell us about his shoe size.

3 A. Well, he wear about a eleven and a half now.

4 Q. And how old is he now?

5 A. 15.

6 BY MR. LUMUMBA: I have no further questions.

7 CROSS-EXAMINATION BY MR. EVANS:

8 Q. Ms. Moore.

9 A. Uh-huh.

10 Q. Do you remember on 9-6-96 talking to John Johnson
11 and Robert Jennings at the Winona Police Department?

12 A. Yes, I do.

13 Q. Do you remember telling both of them on the
14 statement that you gave that day that Curtis Flowers wore
15 Fila tennis shoes?

16 A. No, I don't.

17 Q. I show you the notes and see if you can remember
18 them?

19 BY MR. LUMUMBA: Judge, I don't have any
20 problems with him showing her the notes, but I have
21 problems with him calling that a statement. That
22 is not a statement. That is something that
23 somebody wrote down--

24 BY THE WITNESS:

25 A. --No.

26 BY THE COURT: Wait just a minute. You need
27 to identify-- I realize they are notes, but you
28 need to identify whose notes they are.

29 BY MR. EVANS:

1 Q. These being notes of John Johnson and Robert
2 Jennings taken 9-6-96 when you were interviewed at the Winona
3 Police Department.

4 A. No.

5 Q. Do you deny that you told John Johnson and Robert
6 Jennings that Curtis Flowers wore Fila tennis shoes?

7 A. Right.

8 Q. And further, you said you wasn't sure whether you
9 had seen him wearing them since the murders or not?

10 A. Right.

11 Q. Do you deny that?

12 A. Yes, I do.

13 Q. Lemarcus told you about Curtis' whereabouts--

14 BY MR. LUMUMBA: --Objection. Objection--

15 BY MR. EVANS: --on that morning too, didn't
16 he?

17 BY MR. LUMUMBA: Objection.

18 **BY THE COURT:** Sustained.

19 **BY THE WITNESS:**

20 A. No, not on that--

21 BY MR. LUMUMBA: --Objection.

22 **BY THE COURT:** --Wait, wait. Wait a minute,
23 ma'am, until I tell you you can answer.

24 Sustained.

25 **BY MR. EVANS:**

26 Q. To make sure that I am clear on that, you are
27 specifically denying that you said that you told those two
28 investigators that Curtis wore Fila tennis shoes, but you
29 don't remember whether you have seen him wearing them since

1 the murders or not?

2 A. No, I did not.

3 BY MR. EVANS: Nothing further of this
4 witness, Your Honor.

5 REDIRECT EXAMINATION BY MR. LUMUMBA:

6 Q. Showing you the same document that Counsel showed
7 you, prior to him showing you this, have you ever seen this
8 before in your life?

9 A. No.

10 Q. Is this your writing?

11 A. No.

12 Q. Is this any tape recording of your voice?

13 A. No.

14 Q. In fact, on these little notes it looks like
15 somebody wrote down Grant Hill and then crossed it out;
16 right?

17 A. Right.

18 BY MR. EVANS: Your Honor, we offer the
19 exhibit into evidence.

20 BY MR. LUMUMBA: I object.

21 BY THE COURT: Identify through this witness?

22 BY MR. EVANS: Yes, sir.

23 BY MR. LUMUMBA: It is clearly hearsay.

24 BY THE COURT: Oh, that is overruled-- I mean
25 I'm not going to allow that.

26 BY MR. LUMUMBA: I don't have any other
27 questions of Ms. Moore.

28 BY THE COURT: Okay. Is she finally excused?

29 BY MR. LUMUMBA: As far as I am concerned, she

1 is, Judge.

2 **BY THE COURT:** You are free to go.

3 BY MR. LUMUMBA: One second.

4 (Defense Counsel confer briefly.)

5 BY MR. LUMUMBA: I have nothing else.

6 **BY THE COURT:** You are free to go.

7 WITNESS EXCUSED.

8 **BY THE COURT:** Who do you have next?

9 BY MR. LUMUMBA: Okay, the next witness that I
10 am calling is Latoya Harding.

11 **BY THE COURT:** Latoya--

12 BY MR. LUMUMBA: Hold it, hold it, please.

13 Okay, I would call Mr. Glover.

14 **BY THE COURT:** Mr. Glover.

15 BY MR. LUMUMBA: Billy Glover.

16 (Witness enters courtroom.)

17 **BY THE COURT:** Come up here, Mr. Glover.

18 Would you raise your right hand. You have not been
19 sworn, have you?

20 BY THE WITNESS: No, sir.

21 **BILLY GLOVER,**

22 a black male called to testify as a witness by the Defendant,
23 having first been duly sworn, testified as follows, to-wit:

24 **BY THE COURT:** Have a seat up there, please
25 sir. And state your name for the record.

26 BY THE WITNESS: Billy Glover.

27 DIRECT EXAMINATION BY MR. LUMUMBA:

28 Q. Mr. Glover, could you share with us, please, where
29 you live?

1 A. Carrollton, Mississippi. House 506.

2 Q. Okay, and how long have you lived in Mississippi?

3 A. All my life.

4 Q. How old are you now?

5 A. 38.

6 Q. Okay, Mr. Glover, are you presently employed?

7 A. Yes, sir.

8 Q. What is it that you do?

9 A. Construction work, concrete finishing for J.D.
10 Ferguson.

11 Q. Now what I would like to ask you is do you know a
12 person by the name of Curtis Flowers?

13 A. Yes, sir.

14 Q. Can you-- is he here in the courtroom?

15 A. Yes, sir.

16 Q. Can you identify him, please, by pointing to him?

17 A. Right here.

18 BY MR. LUMUMBA: For the record the witness
19 has identified Mr. Flowers.

20 BY THE COURT: Let the record reflect that.

21 BY MR. LUMUMBA:

22 Q. I would like to take you back to about the 16th of
23 July of 1996 and ask you if you can recall seeing Mr. Flowers
24 on that day?

25 A. (No immediate response.)

26 Q. The date-- well, let me ask you this. Do you
27 recall the date that the Tardy incident occurred?

28 A. Yes.

29 Q. Okay, and do you recall seeing Mr. Flowers on that

1 day?

2 A. Yes, I seen him that morning.

3 Q. And what time that morning did you see him?

4 A. Uh, a little--9:00, between 9:00 and 9:30, 9:15,
5 something like that.

6 Q. Okay. Now if you can recall. Now if at any time
7 you can't recall, just let me know. It's okay.

8 A. Okay.

9 Q. But is that your best recollection?

10 A. Yeah, that's my best.

11 Q. Okay. Now why-- where did you see him?

12 A. He came over to his sister's house.

13 Q. And where does his sister live? On what street?
14 Do you know?

15 A. Cemetery Road, I think.

16 Q. Do you know what-- did she live in her house with
17 anybody else?

18 A. Her and her husband.

19 Q. Okay. Was anybody else there that day?

20 A. Yeah, her cousin, Latoya.

21 Q. Latoya. Okay, now her sister is, what is her
22 sister's name?

23 A. Priscilla.

24 Q. Had you been over to her house before?

25 A. Yes, sir.

26 Q. Have you been over to her house since?

27 A. Yes, sir.

28 Q. Do you know her house when you see it?

29 A. Yes, sir.

1 Q. Do you actually know the name of the street?

2 A. No, sir. Not actually, but I think it's Cemetery
3 Road.

4 Q. Have you ever heard of Dennis Street--

5 BY MR. HORAN: --Your Honor, he can't lead his
6 witness.

7 BY THE COURT: You can't lead him.

8 BY MR. LUMUMBA:

9 Q. Okay. Are you familiar with the street names up in
10 there?

11 A. No, sir.

12 Q. How far is her house from where Curtis lives?

13 A. Oh, a block over.

14 Q. Okay, are there other relatives of the Flowers
15 family that live in that area?

16 A. (No immediate response.)

17 Q. If you know?

18 A. Yeah, her cousin, he live across the street from
19 her.

20 Q. Who is that?

21 A. Mario.

22 Q. And do you know where the parents live or lived at
23 that time? I know they don't stay there any more.

24 A. I know where they lived, but I don't know the name
25 of the street.

26 Q. Okay, and you don't actually live in Winona?

27 A. No.

28 Q. Where do you actually live?

29 A. Carrollton.

1 Q. Carrollton, okay. Now let me ask you this. How is
2 it that you-- what was happening the day that you saw Mr.
3 Flowers?

4 A. Well, I went by-- we supposed to have been working,
5 but it started raining and I went by to see James, but he had
6 went to work so--

7 Q. What is James' last name?

8 A. James Ward.

9 Q. Who is he related to?

10 A. That is Curtis' brother-in-law, Priscilla's
11 husband.

12 Q. Priscilla's husband, okay.

13 A. So he wasn't there and wasn't nobody there but
14 Priscilla and Latoya. But Priscilla, she had to leave to go
15 to the courthouse, and that left me and Latoya there.

16 Q. At any point in time did you -- well, about how
17 long did you see Curtis, and how long was he at that
18 location?

19 A. 15 or 20 minutes; 10 or 15 minutes, something like
20 that.

21 Q. Where is that by the way? Is that on the east--
22 do you know where 51 is? Are you familiar with 51?

23 A. Yeah.

24 Q. Okay. Is that on the same side of the road of 51
25 that Curtis' house is on or the opposite side of 51?

26 A. The same side.

27 Q. Are you familiar with downtown Winona?

28 A. Yeah.

29 Q. Where-- using 51, is that on the same side of the

1 road of 51 that Tardy's is on, or is that on the opposite
2 side of where Tardy's is?

3 A. It's on the opposite side of it.

4 BY MR. LUMUMBA: Okay. I don't have any other
5 questions of this particular witness.

6 CROSS-EXAMINATION BY MR. HORAN:

7 Q. Mr. Glover, Priscilla left that morning. I think
8 she had to be in court around, at 9:00; right?

9 A. Yeah.

10 Q. She left. Would it be safe to say she left about
11 8:40, something like that? I'm not trying to tie you down.
12 You didn't have any reason to look at your watch every 5
13 minutes seeing people were coming in and people were leaving,
14 did you, Mr. Glover?

15 A. No.

16 Q. You didn't have any reason to constantly look at
17 your watch; right, that particular day?

18 A. Yeah, you are right.

19 Q. Okay, I'm not going to try to tie you down to any
20 exact times, but she left approximately at 8:40 that morning;
21 right?

22 A. Uh.

23 Q. That's what your testimony-- is that close?

24 A. She left about 5 minutes till.

25 Q. To be there at 9:00?

26 A. Yeah. It's maybe about a two minute drive.

27 Q. Okay. And you say that Curtis came over some 15 or
28 20 minutes after that?

29 A. About 5 or 10 minutes after.

1 Q. He wasn't sleep walking, was he?

2 A. No.

3 Q. He was wide awake?

4 A. Yeah.

5 Q. And Curtis was wearing white tennis shoes that day,
6 wasn't he?

7 A. Really I done forgot what color the shoes was. I
8 know they was tennis shoes--

9 Q. --Let me direct your attention to--

10 A. They might have been white. They could, yeah,
11 white--

12 Q. --Do you recall making a statement previously, and
13 you were asked the question, "Was he wearing dress shoes or
14 tennis shoes?" Do you remember ever being asked that
15 particular question?

16 A. Yeah.

17 BY MR. LUMUMBA: May we get a reference on the
18 date?

19 BY MR. HORAN: Yeah, 8-20.

20 BY MR. LUMUMBA: 8-20?

21 BY MR. HORAN: Yes, sir.

22 BY MR. LUMUMBA: Okay, thank you.

23 BY MR. HORAN:

24 Q. And you said, "They were tennis shoes. They were
25 probably white. I remember they were white." Do you
26 remember making that statement, Mr. Glover?

27 A. I could have.

28 Q. Do you remember making that statement? I will
29 show you this right here.

1 A. That's your name right there, Billy James Glover;
2 right. You were asked a question, "Was it dress shoes or
3 tennis shoes?" "No, they were tennis shoes. You know, they
4 probably were white. I remember they were white. I didn't
5 pay that much attention to his shoes, you know, but I
6 remember they were white." You said, "I remember they were
7 white."

8 A. I said they was probably white.

9 Q. No, no, no. After that, what did you say? Read
10 that.

11 A. I don't remember that.

12 Q. You don't remember saying that?

13 A. Well, I could, I could have said that.

14 Q. "I remember they were white."

15 A. Well, yeah.

16 Q. Okay. Now--

17 BY MR. LUMUMBA: --Judge, can we ask him to
18 read that whole thing?

19 BY MR. HORAN: I will read the whole thing.

20 BY MR. LUMUMBA: I think that is a little
21 cheating on the answer there.

22 BY MR. HORAN: I will read the whole thing.

23 BY MR. HORAN;.

24 Q. "No, they were tennis shoes. You know, they were
25 probably white. I remember they were white. But I didn't
26 just, I didn't really pay that much attention to his shoes,
27 you know." That's what you said; right?

28 A. Yeah.

29 Q. Okay. Now Mr. Flowers at that particular time he

1 wasn't working, was he, to your knowledge?

2 A. (No immediate response.)

3 Q. On that particular date he--

4 A. --no, he wasn't working, not that particular day.

5 Q. Or the day before that? He didn't have a job the
6 day before that?

7 BY MR. LUMUMBA: If he knows.

8 BY THE WITNESS:

9 A. I think he was helping somebody part time or
10 something.

11 Q. Okay, but he came over to that house on a regular
12 basis; right? You were there pretty regular when he would
13 come over there?

14 A. No.

15 Q. Okay. Do you remember the question was asked of
16 you, page 817. You know-- the question was, "Do you know why
17 Curtis Flowers came over there that morning?" You said,
18 "Well, he came over there every, you know, every morning
19 since he wasn't working, you know."

20 A. Yeah.

21 Q. Right? I mean he was coming over there every
22 morning during a short period of time; right?

23 A. That was-- well, that's what his brother-in-law was
24 saying, you know.

25 Q. But he was coming over there every day?

26 A. Yeah, I guess he was, yeah.

27 Q. But you can't really say what time Mr. Flowers got
28 there that particular morning, can you, Mr. Glover, to be
29 certain what time Mr. Flowers got there? You are not

1 absolutely positive what time he got there, are you, Mr.
2 Glover? You are giving this jury an approximation--

3 BY MR. LUMUMBA: --Judge, at some point the
4 questioning has to stop.

5 BY THE WITNESS: Well, he couldn't--

6 BY THE COURT: --Right. Ask him one question
7 at the time.

8 BY MR. HORAN:

9 Q. Okay. You are not positive are you, Mr. Glover?

10 A. In between 9:00 and 9:30 because they have, they
11 got clocks on the wall, and I remember looking at the clock
12 after the sister left.

13 Q. Well, you stated earlier in your previous sworn
14 testimony that you thought it was between 9:00 and 9:30, and
15 then you said it was 15 after 9:00, and then you said it may
16 have been 10 after 9:00.

17 BY MR. LUMUMBA: Judge--

18 BY MR. HORAN:

19 Q. --Do you remember making that particular statement?

20 A. Yeah.

21 BY MR. LUMUMBA: Judge.

22 Q. You are not sure when he got there, are you?

23 BY MR. LUMUMBA: Excuse me. Judge, object.

24 BY MR. HORAN: Your Honor, can I not cross
25 him?

26 BY THE COURT: He can make an objection, and I
27 have got to hear the objection before I can rule.

28 BY MR. LUMUMBA: Excuse me. Objection.

29 Improper impeachment. If he is saying it's between

1 9:00 and 9:30, 10 minutes after 9:00 and 15 minutes
2 after 9:00 are both in between 9:00 and 9:30. I
3 don't see how that impeaches--

4 **BY THE COURT:** --Well, he is entitled to
5 cross-examine him. Go ahead.

6 **BY MR. HORAN:** I am just trying to establish
7 he doesn't really know what time he got there.

8 **BY MR. HORAN:**

9 Q. You are not positive as to the minute he got there?

10 A. No, I can't just within the exact minute and second
11 that he came in.

12 Q. But you know it was before 9:30. You know that?

13 A. Yeah.

14 Q. But he wasn't asleep when he, he didn't go over--
15 he wasn't sleep walking?

16 A. No, he wasn't sleep walking.

17 **BY MR. HORAN:** Okay. Nothing further.

18 **REDIRECT EXAMINATION BY MR. LUMUMBA:**

19 Q. Do you own any white gym shoes?

20 A. Yeah.

21 Q. You wasn't in Tardy's that day, were you?

22 A. No, sir.

23 Q. Okay. How many people you think in Winona own
24 white gym shoes?

25 **BY MR. HORAN:** I didn't get into all that.

26 **BY THE COURT:** Sustained.

27 **BY MR. LUMUMBA:** I don't have any further
28 questions of Mr. Glover.

29 **BY THE COURT:** Is he finally excused?

1 BY MR. LUMUMBA: Yes, sir. I would certainly
2 say so.

3 BY THE COURT: All right, Mr. Glover, you are
4 free to go.

5 WITNESS EXCUSED.

6 BY THE COURT: Who will you have next?

7 BY MR. LUMUMBA: We would call at this time
8 Mr. Odell Glover-- I mean Odell Hollman; I'm sorry.
9 Mr. Odell Hollman.

10 BY THE COURT: I believe it's Jr., isn't it?

11 BY MR. LUMUMBA: Is he a Jr.? Oh, he may be,
12 Judge. I'm not sure.

13 BY MR. EVANS: I think so, Your Honor.

14 (Witness enters the courtroom.)

15 BY THE COURT: Raise your right hand, Mr.
16 Hollman.

17 ODELL HOLLMAN, JR.,

18 a black male called to testify as a witness by the Defendant,
19 having first been duly sworn, testified as follows, to-wit:

20 BY THE COURT: Have a seat right there, please
21 sir. And state your name for the record.

22 BY THE WITNESS: State my name?

23 BY THE COURT: Yes, sir.

24 BY THE WITNESS: My name is Odell Hollman.

25 DIRECT EXAMINATION BY MR. LUMUMBA:

26 Q. Okay, and Mr. Hollman, could you tell the ladies
27 and gentlemen of the jury how old you are?

28 A. 23.

29 Q. And where do you normally reside?

1 A. The state penitentiary.

2 Q. Where do you normally reside before that?

3 A. In Carroll County.

4 Q. Carroll County?

5 A. Yes, sir.

6 Q. And who do you live with?

7 A. My mother.

8 Q. Tell me a little bit about that. What, your
9 family, what does your family consist of? You have your
10 mother?

11 A. Yeah, I have a mother and three sisters and a
12 father.

13 Q. And your three sisters, do you know a person by the
14 name of Patricia Hollman?

15 A. Yes, sir.

16 Q. Okay, now Mr. Hollman, I would like to call your
17 attention back to 1996 and ask you this question. At any
18 point in time did you have a discussion with Patricia Hollman
19 with relationship to this case, and this is the case
20 involving Tardy Furniture Store?

21 A. Yes, sir.

22 Q. Tell the ladies and gentlemen of the jury what the
23 discussion was about?

24 A. Uh, well, first of all, I had lost my job and
25 everything, and I was needing -- I had lost my job. Then my
26 probation officer was trying to send me back to Parchman
27 because I didn't have the money to pay my fine. And so me
28 and my sister-- well, I went over to my sister's house around
29 the first week in August of 1996. And me and her was talking

1 about getting some money, this and that. And so I had said,
2 I said, I said it's a reward out for the person who, for the
3 man who killed them Tardy Furniture people. So she said--
4 you know, I just said there was a reward out.

5 So we kept on talking and stuff. So I said, I
6 said, I said, "Would you, why don't you try to get that money
7 there?" And she said, "How am I going to do it?" I said,
8 "Well, you know, they got Curtis charged with, they trying
9 to charge Curtis with that, with the murder. So tell them
10 that you know who did it and get the money." So she said,
11 "All right, I will think about it." All right, I didn't say
12 nothing else. So I started getting on her more and more
13 because I was, my probation officer kept telling me, I'm
14 going to send you back to the penitentiary if you don't come
15 up with this money right here.

16 And then my car, everything was going down on me
17 all at once. And then she was telling me she got bills to
18 pay. Then man, I'm talking about there was so much stuff
19 going on then. So next thing you know, me and her steady
20 talking and stuff. So she said she going to do it. She was
21 going to do it. So I didn't say nothing else.

22 So about a few weeks, few days later passed by.
23 She tell me, she told me-- I had went back over there. I
24 normally go over there sometimes two times a week or
25 something where my nephews at and nieces, talk with them and
26 mess with them. So I had went back over there and asked her
27 did she do it. She said yeah. So I said, "Well, where the
28 money at?" She said, "They didn't give it to me." I said, I
29 said, I said, "What you talking about, they didn't give it to

1 you?" She said, "They have got to find him guilty before
2 they give me the money."

3 So I'm like Man, man, man. So I ain't going to
4 worry about it. So I just-- things kept going on and going
5 on. So I used to come by there every other day, every other
6 day. She was telling me, she was telling me that, I asked
7 her. I used to go by there and ask her did she uh-- I said,
8 "Well, you holler back at them. Holler back at them.
9 Holler back at the DA, see what they say," this and that.
10 She said, "Yeah, but they ain't did nothing though."

11 Q. Did there come a time when you were -- you were out
12 of jail at this time you are talking about?

13 A. Yes, sir.

14 Q. Did there come a time when you went to jail?

15 A. Yes, sir. I went to jail.

16 Q. And what was it for?

17 A. Violating probation.

18 Q. Now you have been convicted before; is that
19 correct?

20 A. Yes, sir.

21 Q. And what was that conviction for?

22 A. Aggravated assault.

23 Q. And was the probation a violation of aggravated
24 assault?

25 A. Yes, sir.

26 Q. Okay. And now did you communicate with her at all
27 once you were incarcerated?

28 A. Yes, sir.

29 Q. And what, and when did you go to jail?

1 A. I went to jail January the 24th, 1997. And that's
2 when it really started jumping off then. So my probation
3 officer kept telling me-- they done locked me up now, but now
4 the only reason, the only way I can get out if I pay my
5 fine. So I'm steady, I'm steady telling her to go up there
6 and try to come up with the money, get the money somewhere,
7 come up with it some kind of way because we done pulled scams
8 before, you know. And it wasn't nothing, she tells me ain't
9 nothing she can do.

10 So I said, well-- after my probation officer
11 revoked my parole, I said, well, you might as well just stop
12 lying then. It ain't no need of telling no more lies then.
13 And she tells me it ain't nothing I can-- she tells me, she
14 said, "Well, I can't, I can't turn, I can't turn back my
15 words now." I am like, what you talking about? She said,
16 "They might try to do something to me if I was to tell them,
17 you know, I was lying and this and that, trying to get the
18 money."

19 Q. Let me ask you this here. Were you ever made aware
20 of the fact that there was a hearing that she was involved
21 in?

22 A. Yes, sir.

23 Q. Okay. Now what did you do, if anything, after you
24 heard that she was involved in this hearing?

25 A. Well, first I got with my mama.

26 Q. And did you just talk to your mother?

27 A. Yes, sir.

28 Q. Okay, now I don't want this hearsay is what she
29 said, but what did you do after that?

1 A. Well, after that, I got in touch with-- one day I
2 was on the yard and got in touch with Curtis, and I asked him
3 for your address because I feel like I done brought this on
4 myself. I feel like, my conscience kept eating me up for
5 it. I feel like I was the one. You know, my conscience was
6 bothering me. You know what I'm saying? So I asked him for
7 your address so I can write you a letter.

8 Q. Did you do so?

9 A. Yes, sir.

10 Q. Prior to that time, had I ever seen you or talked
11 to you?

12 A. No, sir.

13 Q. Okay. Now what was your-- are you a friend of
14 Curtis? Do you have a friendship with Curtis or anything?

15 A. No, sir.

16 Q. Now let me ask you this. As it relates to, were
17 you ever in the county jail after your probation was
18 violated?

19 A. Yes, sir.

20 Q. And while you were-- and this was, and while you
21 were in the county jail, this was before or after this first
22 hearing?

23 A. It was before.

24 Q. Okay, and during that time what were you doing in
25 order to get out of jail, if anything? What were you trying
26 to do?

27 A. I was trying to come up with some money.

28 Q. And who were you talking to?

29 A. I was talking to my sister. That was about the

1 only person was helping me then.

2 Q. Okay, now let me ask you this. You said that you
3 visited your sister sometimes?

4 A. All the time.

5 Q. Okay, did she have any children?

6 A. Yes, sir.

7 Q. And what is their names?

8 A. Tavaris, Kevin and Dominique.

9 Q. And who is the oldest?

10 A. Tavaris.

11 Q. Back in 1996, had he ever been-- do you know
12 whether or not his mother had ever purchased any Grant Hill
13 Fila shoes for him?

14 A. No, sir. She ain't never bought them children no
15 name brand shoes, you know. She, they usually constantly
16 get on up, get on me and my mama about buying them some
17 shoes. So I know that. I know, no, she ain't never bought
18 them none.

19 Q. Now do you know if, do you know of your own
20 personal knowledge or did you know of your own personal
21 knowledge what she had actually told the District Attorney or
22 anybody else?

23 A. No, sir. I can't say.

24 Q. Were you just asleep in the back, by the way?

25 A. Yes, sir.

26 Q. By the way, on your present conviction, when-- now
27 is that the only conviction that you have had?

28 A. Yeah, that's the only felony I got.

29 Q. Okay, now let me ask you this. Are you supposed,

1 when are you supposed to be released from jail?

2 A. If I don't receive another RVR in the next four
3 months, I will be released on probation. But now I flat time
4 it in January of 2000.

5 Q. Okay, now so let me see if I can translate that.
6 The latest you would be released would be January of 2000?

7 A. Yes, sir.

8 Q. When is the earliest?

9 A. July the 18th.

10 Q. Of what year?

11 A. This year, '99.

12 Q. Okay, has anybody from your the Defense given you
13 anything?

14 A. No, sir.

15 Q. Has anybody offered you a reward?

16 A. No, sir.

17 Q. And are you related to Curtis Flowers in any kind
18 of way?

19 A. No, sir.

20 Q. Who is your sister?

21 A. Patricia Hollman. Patricia Ann Hollman, my sister.

22 Q. And who contacted me about this case?

23 A. I did. I contacted.

24 (Pause.)

25 BY MR. HORAN: Are you through, Mr. Lumumba?

26 BY MR. LUMUMBA: Hold on one second.

27 (Defense Counsel confer briefly.)

28 BY MR. LUMUMBA: No further questions of this
29 witness, Judge.

1 CROSS-EXAMINATION BY MR. HORAN:

2 Q. How are you doing, Odell? Good to see you again.

3 A. Yeah.

4 Q. I'm the man that sent you away the first time;
5 isn't that right?

6 A. No, you didn't send me away.

7 BY MR. LUMUMBA: I object.

8 BY THE COURT: That is not relevant. Let's
9 move on.

10 BY THE WITNESS:

11 A. You didn't send me away.

12 Q. I prosecuted your case though.

13 A. No, you did not. I plea bargain.

14 Q. Let me ask you something here. This board seems to
15 be the exhibit of the day for some reason. Judge Loper was
16 the Judge that revoked you. You remember him?

17 A. Yes, sir.

18 Q. And your sister doesn't have anything on Judge
19 Loper, does she? She doesn't have any secrets on Judge
20 Loper, does she, that you are aware of?

21 A. Uh. What you talking about?

22 Q. Well, she doesn't have anything that Judge Loper
23 did?

24 A. No, I don't know. What you talking about?

25 Q. I mean she doesn't have any-- I want to know that,
26 okay.

27 A. No, I don't know what you talking about.

28 Q. Okay, I am fixing to show you. Now I'm going to
29 show you what I'm talking about. You were revoked on 6-26 of

1 '96; right?

2 A. No, sir.

3 Q. Do you want to see the order of revocation, a
4 certified copy of it?

5 A. No.

6 Q. Would you like to see that?

7 A. No, you wrong.

8 Q. Well, I will show you the order.

9 A. It was '97.

10 Q. '97, that's right. '97. I'm sorry. That's right,
11 '97.

12 A. Yes, sir.

13 Q. That's when you got revoked?

14 A. Yes, sir.

15 Q. And Patricia testified at the prior hearing, Mr.
16 Lumumba asked you about.

17 (Mr. Horan writes on pad on large easel.)
18 On the 14th of September, 1997. You don't disagree with
19 that, do you?

20 BY MR. LUMUMBA: Wait a minute, Judge.

21 BY THE WITNESS:

22 A. What you saying? I don't understand what you are
23 saying.

24 BY MR. LUMUMBA: Can we approach just one
25 second?

26 BY THE COURT: Uh-hum.

27 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
28 THE JURY AS FOLLOWS:)

29 BY MR. LUMUMBA: For whatever it is worth,

1 wasn't it October of '97? I think it was October.

2 BY MR. EVANS: September.

3 BY MR. HORAN: The second trial. The first
4 trial was in September.

5 BY MR. LUMUMBA: He only had one trial.

6 BY MR. EVANS: It was September.

7 BY THE COURT: I think it was October.

8 BY MR. HORAN: Okay.

9 BY THE COURT: That is not-- what he said
10 exactly.

11 BY MR. FREELON: What's on the transcript?

12 BY MR. LUMUMBA: The transcript. I will get
13 the transcript.

14 BY THE COURT: Yeah, whatever it was. I am
15 confident it was, the 13th of October.

16 END BENCH CONFERENCE

17 BY MR. HORAN:

18 Q. Whatever; it was either the ninth or tenth month of
19 that year; right?

20 A. (No response.)

21 Q. You said, you told Mr. Lumumba you knew when she
22 testified, you know, she testified. You were, you found that
23 fact out. It was either in September or October; right?
24 Right?

25 A. I don't know when she testified.

26 Q. Well, you wrote him a letter, did you not?

27 A. I didn't tell him nothing about I knew when she
28 testified. I knew she was testifying.

29 Q. But you don't disagree with me that it was at that

1 point in time?

2 A. I don't disagree.

3 Q. And you had been revoked. Nothing Patricia-- you
4 just told me you didn't know that Patricia had anything on
5 Judge Loper. Your revocation order had already been entered;
6 right?

7 A. No, sir. Let me speak.

8 Q. Well, wait just a minute.

9 BY MR. LUMUMBA: No, no--

10 BY MR. HORAN: No, he is going to answer yes
11 or no. Then he can--

12 BY THE COURT: He can answer yes or no and
13 then explain.

14 BY MR. HORAN:

15 Q. Yes, sir.

16 A. Let me speak, please, sir.

17 Q. Okay.

18 A. When I found out--

19 BY THE COURT: You must answer yes or no.
20 Then you can explain it all you want to.

21 BY THE WITNESS:

22 A. Ask the question. Ask the question.

23 Q. All right. When Patricia testified, Judge Loper
24 had already revoked you?

25 A. Right.

26 Q. For not paying the fine?

27 A. Right.

28 Q. For not going to the restitution center?

29 A. Right.

1 Q. You refused to go down there and work and pay off
2 your fine?

3 A. Right.

4 Q. And he revoked you?

5 A. That's right. That's right. I agree with that.

6 Q. And she testified some three or four months after
7 that?

8 A. Okay. Now you want me to say what I got to say?

9 Q. You can explain your answer to that particular
10 question, Mr. Hollman.

11 A. Well, I had told her-- that's why I had told her
12 don't even worry about it. That's why I had told her just
13 let it go; stop lying. But now she didn't.

14 Q. Well, whoa, whoa, whoa, whoa, whoa. That is not
15 what you told Mr. Lumumba in the letter, was it, Mr. Hollman?

16 A. It ain't nothing in that letter like that.

17 Q. Read this right here. "I had my sister lie on the
18 stand. I had a fine to pay off."

19 A. Right.

20 Q. Well, you didn't have the fine to pay off at that
21 point in time, did you, Mr. Hollman?

22 A. See you--

23 Q. Because you refused. You refused to work, and
24 Judge Loper entered in the order, did he not? You stood in
25 front of him, and he said, Mr. Hollman, you are not going to
26 work. You refuse to do this. You haven't paid the fine
27 off. I'm revoking your probation, and I'm sending you to
28 Parchman. That's what he told you, didn't he?

29 A. I had-- yeah, he told--

1 Q. Yes or no?

2 A. Okay, then when he told me that, I had already had
3 told her to stop lying now. See, you fail to realize. You
4 just taking a little bit, a little bit. You are taking a
5 little bit out of there and trying to use it, but now you
6 need, you ain't taking all of it out of there. You are just
7 taking what you want to take out of it.

8 Q. I am just asking you--

9 BY MR. LUMUMBA: --Judge, excuse me. The
10 witness--

11 BY MR. HORAN:

12 Q. Are you through? Are you through?

13 A. Yeah.

14 BY THE COURT: I thought he was through too.

15 BY MR. HORAN:

16 Q. Now Mr. Hollman, you just testified and I think you
17 said something about the \$30,000, and you and Patricia had
18 this plan together to put the finger on this Defendant;
19 right?

20 A. I ain't said nothing about no money. I ain't said
21 what, how much money it was.

22 Q. Well, you did say in that letter, didn't you?

23 A. The only thing I said was some money.

24 Q. You did say in the letter, did you not?

25 A. Yeah.

26 Q. Said, "I told her to tell the police"--

27 A. That was in January.

28 Q. "I told her to tell the police"--

29 A. --Yeah, in January.

1 Q. --"that she knew who committed those murders."

2 A. Right.

3 Q. "So she could get that \$30,000."

4 A. That was in January then I told her to do that.

5 Q. "and get me out"?

6 A. Right. Exactly.

7 Q. Well, I mean her testimony is and her statement is,
8 you wouldn't disagree with me, that she saw Curtis that
9 morning, and he was wearing Fila Grant Hill tennis shoes.
10 That is not, that is not really-- that is not a very good
11 plan is it, Mr. Hollman?

12 A. She said what?

13 Q. That he was wearing Grant Hill tennis shoes, and
14 she saw him that morning. That is all she has testified to
15 basically with some other things. I mean y'all didn't have a
16 very good plan, did you?

17 A. No, I didn't plan nothing.

18 Q. Okay. You testified earlier that you were part of
19 this so-called plan.

20 A. I ain't said me--

21 BY MR. LUMUMBA: For the record, Judge, I
22 think--

23 BY THE WITNESS:

24 A. --between me and her?

25 BY MR. LUMUMBA: --Excuse me. Objection. For
26 the record, just so we won't state facts not in
27 evidence, he specifically said he did not know what
28 she told the police. That's specifically what he
29 said. That is his testimony. He is

1 mischaracterizing the witness' testimony.

2 BY MR. HORAN: I'm not mischaracterizing
3 anything.

4 BY MR. LUMUMBA: Now is Counsel-- excuse me.
5 Is Counsel going to mutter or mumble under his bare
6 breath, or is he going to argue about the objection
7 or what? My objection is he can't stand up there
8 and misstate the witness' testimony. The testimony
9 was--

10 BY MR. HORAN: --I am characterizing it as a
11 plan with him and his sister to do something, and I
12 think that is clear before the jury.

13 BY THE COURT: He is on cross--

14 BY MR. LUMUMBA: --No problem with that, but
15 to say that he knew what she said is contrary to
16 what he said.

17 BY MR. HORAN:

18 Q. You knew what you told her, according to you, what
19 you wanted her to say?

20 A. She didn't-- I don't know whether she said what I
21 told her to say or not.

22 Q. But you were, according to your own testimony here
23 today, assuming, assuming it's true.

24 A. Oh, it's true.

25 Q. You were trying to get her to perjure herself?

26 A. Oh, we was doing it together. It was a team. It
27 was team work.

28 Q. Okay. It was team work?

29 A. Yeah.

1 Q. Can you explain to me how this team work was going
2 to go down after you got revoked here in '97, and she
3 testified four months later, and you didn't contact Mr.
4 Lumumba until--

5 A. --I contact her.

6 Q. When did you contact Mr. Lumumba?

7 A. I said her. I wrote her. I wrote her letters and
8 stuff. I been talking to her on the telephone, writing her
9 letters, trying to talk to her and stuff. Man, this is my
10 sister, man. I ain't got no reason to lie on my sister,
11 man. We started out together at this right here. But now
12 she done got herself-- I guess you -- well, I ain't going to
13 say that.

14 Q. Well, she gave a statement on August the 7th of
15 1996. You don't disagree with that? You know John Johnson,
16 don't you?

17 A. No.

18 Q. You don't know Mr. Johnson?

19 A. I don't know John Johnson.

20 Q. You wouldn't disagree with me that she talked to
21 Mr. Johnson on the 7th of August, 1996, would you?

22 A. No, sir. I wouldn't disagree.

23 Q. And you don't have any idea what she told him;
24 right?

25 A. No, sir.

26 Q. And there wasn't, you don't know whether or not
27 there was a thirty thousand dollar reward then, do you?

28 A. No, sir. I don't know that. That was back in
29 January, around that way. It was back in -- it was January

1 when the thirty thousand dollars came out. That was just too
2 much money. I was trying to get my hands over to it.

3 Q. Yeah, but you admit, do you not, that you stated in
4 the letter that, "I had my sister to lie on the stand"?

5 A. Yeah.

6 Q. Right?

7 A. Yes, sir.

8 Q. "So I could get my fine paid off"?

9 A. Yeah, we thought, I thought-- okay, go ahead.
10 Finish what you got to say.

11 Q. You admit that's what you told Mr. Lumumba in the
12 letter?

13 A. Yes, sir. I admit to that. I admit to lying,
14 trying to tell her, trying to get her to lie so we can get
15 the money. That was, it all was a plot for me and her to get
16 that money.

17 Q. It was a plot after Judge Loper had already revoked
18 you?

19 A. We been-- this money was from '96 all the way up
20 to, to right when I, before I got revoked -- when they
21 revoked me and I seen I couldn't get the money, that's when I
22 told her to stop lying and tell the truth. That's when it
23 started. That's when I started telling her, let it go. But
24 now we would have got the money, and I would have still been
25 out there. She still, she wouldn't have been on no stand.
26 She wouldn't be lying right now.

27 Q. But she never told you that anyone promised her
28 anything, did she? You didn't testify to that on direct, and
29 you are not testifying to that now, are you?

1 A. She didn't ever tell me that. It spoke for
2 itself--

3 Q. --Had anyone promised her--

4 A. --I thought, you know, it spoke for itself - thirty
5 thousand dollar reward.

6 Q. She didn't tell you anyone offered her anything to
7 testify?

8 A. How you figure it speak for itself? Thirty
9 thousand dollars reward.

10 Q. She volunteered this information on August the 7th,
11 1996, before any reward was even posted.

12 BY MR. LUMUMBA: Well, I object to that.
13 Well, posted, that is the word he used.

14 BY MR. HORAN: Right.

15 BY MR. LUMUMBA: But I object to that because
16 I don't think that is accurate. I think the reward
17 came up-- if I remember, the reward came up --
18 there is a paper there that has got reward the day
19 of the man's funeral.

20 BY THE COURT: Well, the jury has heard the
21 evidence, and they can evaluate it. That is their
22 job.

23 BY MR. HORAN: I will rephrase the question.
24 He is right about that.

25 BY MR. HORAN:

26 Q. But the thirty thousand dollars, that certainly
27 wasn't there the 7th of August of 1996, was it?

28 A. I didn't say it was.

29 Q. Okay. Now when were you incarcerated as a result

1 of your revocation? What I mean is they picked you up
2 before they revoked you; right?

3 A. They picked me up.

4 Q. And when was that day?

5 A. January the 24th, 1997.

6 Q. Okay, so you stayed in jail for a period of almost
7 six months prior to your revocation?

8 A. That's right.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. And at no point in time during that period of time
12 did you-- you weren't out on bond. Make any-- you didn't
13 make the bond to get out before your revocation hearing, and
14 you didn't pay off any of these fines?

15 A. (No response.)

16 Q. In fact, Judge Loper offered you the opportunity,
17 did he not, to go to the restitution center in Jackson?

18 A. That's right.

19 Q. To work it off?

20 A. That's right.

21 Q. He said, Odell, let's just go and work this stuff
22 off.

23 A. Yeah, he said that.

24 Q. But you said what?

25 A. I wasn't going to work.

26 Q. That's right.

27 BY MR. HORAN: Nothing further.

28 REDIRECT EXAMINATION BY MR. LUMUMBA:

29 Q. Just a couple of questions, Mr. Hollman. All I

1 really want to know is that did anybody convict you, or did
2 you plead guilty to the crime?

3 A. I pled guilty.

4 Q. Okay, so secondly, did Mr. Flowers, myself or
5 anybody else approach you for your testimony?

6 A. No, sir.

7 Q. Who sent the letter?

8 A. I did. I got a conscience, man. That hurt me
9 every day, man.

10 Q. Now by the way, when you got the information from
11 Mr. Flowers about my address, you have testified to that; is
12 that right?

13 A. Yes, sir.

14 Q. Was he somewhere where you could talk to him close,
15 or did you have to--

16 A. --I had to scream. I had to holler to him.

17 Q. Has Mr. Flowers ever been on any yard--

18 BY MR. HORAN: --Your Honor, I didn't go into
19 that, first of all.

20 BY THE COURT: He didn't. Sustained.

21 BY MR. LUMUMBA:

22 Q. Okay. Have you actually ever discussed this case
23 with Mr. Flowers at all?

24 A. No, sir.

25 Q. Patricia Hollman is what to you?

26 A. Is my sister.

27 BY MR. LUMUMBA: I have no further questions.

28 BY THE COURT: Is he finally excused?

29 BY MR. LUMUMBA: This witness is as far as we

1 are concerned, Judge.

2 BY MR. EVANS: Yes, sir.

3 BY THE COURT: Okay. Take him back.

4 WITNESS EXCUSED.

5 BY THE COURT: Who do you have next?

6 BY MR. LUMUMBA: I need maybe a brief recess
7 to talk to Mr. Freelon about that.

8 BY THE COURT: Okay. Let's take a few
9 minutes. I know we are going a little long, but if
10 it is all right, I'm going to go a little longer.

11 (FOLLOWING THE SECOND AFTERNOON RECESS, THE
12 TRIAL RESUMED IN OPEN COURT WITH THE COURT, ALL
13 COUNSEL, AND THE DEFENDANT PRESENT:)

14 BY THE COURT: Okay, we are ready.

15 JURY ENTERS THE COURTROOM AT 5:56 P.M.

16 BY THE COURT: Okay, who will you have next?

17 BY MR. LUMUMBA: Judge, we would call Tina
18 Allen.

19 BY THE COURT: Tina Allen. Mr. Bridges, I
20 guess maybe you ought to go get her.

21 (Witness enters the courtroom.)

22 BY THE COURT: Come up here, Ms. Allen. Have
23 you been sworn previously?

24 BY THE WITNESS: No, sir.

25 BY THE COURT: Would you raise your right
26 hand.

27 TINA ALLEN,
28 a black female called to testify as a witness by the
29 Defendant, having first been duly sworn, testified as

1 follows, to-wit:

2 BY THE COURT: Have a seat over here. Would
3 you state your name for the record, please.

4 BY THE WITNESS: Alva Bertina Allen.

5 DIRECT EXAMINATION BY MR. LUMUMBA:

6 Q. Ms. Allen, could you share with me, please, where
7 is it that you live?

8 A. I am living at 2184 Kerbington Drive in Memphis,
9 Tennessee.

10 Q. And prior to living at that address, where were you
11 living?

12 A. At 702 Dennis Street.

13 Q. And where is that located?

14 A. Winona, Mississippi.

15 Q. Can you I ask you this here. Are you employed at
16 this time?

17 A. Yes, sir.

18 Q. Share with the ladies and gentlemen of the jury
19 what it is that you do.

20 A. I'm a nurse at Southaven Dialysis Unit in
21 Southaven, Mississippi.

22 Q. And how long have you been involved doing that?

23 A. I have been working with the company for, it will
24 be two years in May which I transferred from Greenwood to
25 Southaven in October.

26 Q. What were you, what was your work in Greenwood?
27 The same thing?

28 A. Same thing.

29 Q. Okay. And Ms. Allen, do you have a family in

1 Winona at all?

2 A. My parents.

3 Q. Your parents?

4 A. And my sister and brothers.

5 Q. Okay, and how long have you been living in Memphis
6 now?

7 A. Six months. Since October.

8 Q. Are you involved in more study or just work?

9 A. Just work.

10 Q. Now Ms. Allen, I would like to know if you know a
11 person by the name of Curtis Flowers?

12 A. Yes, sir.

13 Q. And do you see him here in the courtroom?

14 A. Yes, sir.

15 Q. Can you point to him, please.

16 A. The gentleman in the black suit.

17 BY MR. LUMUMBA: Okay, for the record Ms.

18 Allen is pointing to Mr. Curtis Flowers.

19 BY THE COURT: Let the record reflect that.

20 BY MR. LUMUMBA:

21 Q. Now Ms. Allen, I want to call your attention back
22 to the day that the incident happened at Tardy Furniture
23 Store. Do you recall that day?

24 A. Yes, sir.

25 Q. Okay. And can you tell me, please, if you saw Mr.
26 Flowers at all on that day; Mr. Curtis Flowers I'm speaking
27 of?

28 A. Yes, sir.

29 Q. And tell the ladies and gentlemen of the jury where

1 you saw him, and if you can kind of explain to them, do the
2 best you can.

3 A. Okay. It was around 10 o'clock that morning. I
4 was on my way from picking my son up from tutoring session
5 which lasts from 9:00 to 10:00, and I was, left to go home,
6 and he was coming across the JJ Knox campus maybe from-- I
7 got as close as from here to that back door to him. He was
8 coming across the campus that morning.

9 Q. Okay, now the JJ Knox campus, what is that? Tell
10 the ladies and gentlemen of the jury.

11 A. It's the campus where the JJ Knox School used to
12 be, but it burned a long, long time ago, and the slab is
13 still there. And he was coming across-- really he was mostly
14 down there by the basketball court as we call it, which is
15 the foundation. The slab for the foundation is still there,
16 but he was just a little further past the basketball court on
17 that little driveway like.

18 Q. Are you familiar with a place called Jeff's Store,
19 Jeff's Store?

20 A. Yes, sir.

21 Q. Where is that located at?

22 A. It's on 51 Highway.

23 Q. Okay. Now is the place where you saw Mr. Flowers,
24 by the way, is that on the same side of 51 that his home is
25 on, or is it on the opposite side?

26 A. It's on the same side.

27 Q. If you were to, if you were at Mr. Flowers' -- do
28 you know where he stays or where he stayed at that time?

29 A. He was living in the project at that time.

1 Q. He was living in the project?

2 A. Well, I assume he was living in the project. I
3 can't say exactly where he was living, but I think, if I'm
4 not mistaken, he was living in the project with his
5 girlfriend.

6 Q. Okay. Now do you know where the projects is?

7 A. Yes, sir.

8 Q. Okay, if I was in the projects and I was on my way
9 to Jeff's Store, what route could I take?

10 A. (No immediate response.)

11 Q. Would I go, would that area that you described be
12 anywhere near involved in the route?

13 A. Yes, sir.

14 Q. So in other words, is the place that you saw Mr.
15 Flowers, is that-- where is that in relationship to his home
16 and to Jeff's Store?

17 A. Let's see. You want like going to the store?

18 Q. Yes.

19 A. Okay. He would have to come across Powell Street,
20 and most of the people-- that is just a short cut that go
21 across Powell Street and go across the campus, and from there
22 to maybe Harper Street and on to maybe-- I'm not for sure of
23 that street, but maybe Freedman Street-- not Freedman Street,
24 but I'm not for sure the name of that street.

25 Q. But does it lead to Jeff's Store?

26 A. Yes, sir.

27 Q. Okay. I'm going to hold this up to you and tell
28 you that this has been identified as, by a prior as, this
29 exhibit - and this is Exhibit 109 for the record, Judge - as

1 Mr. Flowers' home, okay, up here in this area?

2 A. It's in the projects.

3 Q. Right. Project.

4 A. Okay.

5 Q. This has been identified as Jeff's Store down here
6 where this "X" is. Can you show me, please, where you would
7 proceed if you were going -- where does the lot, this JJ Knox
8 school yard is at?

9 A. Is this Cemetery Lane right here?

10 Q. Yes.

11 A. Okay. You would have to come on to Cemetery Lane,
12 and this is Powell Street.

13 Q. Uh-hum, okay.

14 A. This is Powell. Well, if you come all the way down
15 to Powell Street, you would be on 51. But Mr. Flowers seemed
16 to be coming at an angle across Powell Street and on over to
17 Silver Street and down to 51.

18 Q. Okay, can we repeat that, please, in front of the
19 ladies and gentlemen of the jury. All right, could you--

20 BY THE COURT: You can step down, ma'am.

21 BY MR. LUMUMBA: Can she step down, please?

22 (Witness steps in front of jury box with Mr.
23 Lumumba holding Exhibit S-109.)

24 BY MR. LUMUMBA:

25 Q. Okay, first of all, show me where, assuming as
26 identified that this is the Flowers, this is where Mr.
27 Flowers was staying.

28 BY MR. HORAN: Some of the jurors can't see.

29 BY MR. LUMUMBA: I'm sorry. I'm sorry.

1 Okay.

2 BY THE WITNESS:

3 A. This is--

4 Q. --We are going to do it twice. We will do it so
5 everybody can see it.

6 A. Okay, this will be the project, and he would have
7 to come at an angle. This is Cemetery Lane. He would
8 probably walk straight down Cemetery Lane.

9 BY MR. EVANS: I object to probably where he
10 walked. She can only testify to what she saw.

11 BY THE COURT: Well, I think he-- correct me
12 if I am wrong, but I believe he originally asked
13 her what route could he take.

14 BY MR. LUMUMBA: That's right.

15 BY MR. EVANS: I object to what route he could
16 have taken. The only thing this witness can
17 testify to is what she knows of her own knowledge.

18 BY MR. LUMUMBA: Okay, well, then do this.
19 Well, Judge, your ruling?

20 BY THE COURT: Okay. I sustain the
21 objection.

22 BY MR. LUMUMBA:

23 Q. Show me where--

24 A. --That's the only street unless he goes behind the
25 house. This is the only street in the neighborhood.

26 Q. Show me where the - what do they call it? - JJ Knox
27 School? Where is that? Where would that be?

28 A. It will be located on Powell Street.

29 Q. Okay, it's off Powell Street?

1 A. Yes, sir.

2 Q. Okay. And show me where Jeff's Store is on this
3 map again?

4 A. Well, right next to Silver Street.

5 Q. Right next to Silver Street. And show me again
6 where the projects are?

7 A. Right here on McNutt Drive.

8 Q. One more time, where lot is at? Right off of what
9 street?

10 A. Powell Street.

11 Q. Okay. Now can everybody see? All right. Thank
12 you.

13 A. (Witness resumes witness stand.)

14 Q. Okay, I think you indicated that this is when you
15 were-- what were you doing when you saw him? I'm sorry.

16 A. I was driving down Powell Street.

17 Q. Okay, and what was your purpose? Where were you
18 going, and what were you doing?

19 A. I was going to pick up my son from his tutoring
20 class.

21 Q. Okay, and what time, what time did you indicate
22 that you saw Mr. Flowers?

23 A. It was 10 o'clock.

24 Q. How do you remember it was that day?

25 A. Well, that particular morning, like I say, I had
26 gotten up that morning and carried him to class, and I was on
27 my way to pick him up, and I was on the phone talking to one
28 of my girlfriends, and I told her that I had to go because it
29 was 10:00. So when I got to the kitchen, it was 10 o'clock.

1 So when I got to go out the back door, my telephone started
2 ringing. And I go back to answer my telephone, and it was
3 the teacher telling me she was done with Carlton. So I gets
4 in my car, and me and my daughter, and we was kind of driving
5 kind of fast because she was finished with him, and I wanted
6 to hurry up and get there. And so when I, on Cemetery Lane
7 turning up Powell Street, I could see Curtis right there on
8 that, just a little bit down from the basketball court, and I
9 just looked at him real good, and I am like I wonder why is
10 this guy walking this time of morning. But, you know, I just
11 kept right on driving.

12 BY MR. LUMUMBA: I have no further questions
13 of this witness.

14 CROSS-EXAMINATION BY MR. EVANS:

15 Q. All right, Ms. Allen, I want to make sure that I
16 understand what you are saying. You were in your house. You
17 looked at the phone-- I mean you looked at the clock, and the
18 phone rang at about 10 o'clock. Is that correct?

19 A. Yes, sir.

20 Q. And the clock had 10 o'clock on it?

21 A. Yes, sir.

22 Q. How long were you on the phone?

23 A. I went back to answer the phone, and it was the
24 tutor. My teacher, well, my son's teacher tells me that my
25 son is ready. I said, "Okay. I'm on my way."

26 Q. Okay.

27 A. So then when I get back into--

28 Q. --All right, let's take it one step at a time.

29 A. Okay.

1 Q. Approximately how long were you on the phone?

2 A. 30 seconds, because that was the conversation,
3 "Your son is ready." "Well, I'm on my way."

4 Q. All right.

5 A. That was the conversation.

6 Q. And where were you living?

7 A. At 702 Dennis Street.

8 Q. Okay, so you talked on the phone. Then you walked
9 out to your car; is that correct?

10 A. That's correct.

11 Q. You got in your car?

12 A. Yes, sir.

13 Q. You left your house?

14 A. Yes, sir.

15 Q. Which direction did you travel?

16 A. I backs out my driveway, and I am on Dennis
17 Street. I'm on Cemetery Lane. There is a stop sign at the
18 end of Cemetery Lane and Powell Street.

19 Q. Okay, so however long it would take you to talk on
20 the phone, go get your car and drive over there, that's when
21 you say you saw Curtis Flowers?

22 A. Yes, sir.

23 Q. Do you know Curtis Flowers?

24 A. Yes, sir.

25 Q. Curtis Flowers is who you saw, isn't it?

26 A. Yes, sir.

27 Q. And if there has been testimony that Curtis was
28 seen crossing the road or somewhere around 10 o'clock heading
29 up around Jeff's store, that would be pretty consistent with

1 what you saw, wouldn't it?

2 A. I don't, well--

3 BY MR. LUMUMBA: Crossing what road? I don't
4 understand. I object.

5 BY MR. EVANS: I believe the witness
6 understands whether opposing Counsel does or not.

7 BY MR. LUMUMBA: Crossing the road, it's
8 unclear. What road are we talking about?

9 BY THE COURT: Well, that's right--

10 BY MR. EVANS:

11 Q. --Crossing Highway 51 going towards Jeff's Store;
12 that would be consistent with the time that you saw him over
13 in that area, wouldn't it?

14 A. Not crossing 51.

15 Q. I didn't say you saw him at 51. I said him
16 crossing 51 at Jeff's Store would be consis-- around 10
17 o'clock would be consistent with you seeing him a few minutes
18 after 10:00, wouldn't it?

19 A. Well, he had to be walking fast to get to where I
20 saw him.

21 Q. All right, and if he was walking fast, that would
22 be approximately how long it would take him to get there too,
23 wouldn't it?

24 A. (Pause) Well, yes, sir. He could have gotten
25 there.

26 BY MR. EVANS: No further questions.

27 REDIRECT EXAMINATION BY MR. LUMUMBA:

28 Q. Did you ever see Mr. Flowers on the opposite side
29 of 51?

1 A. No, sir.

2 Q. You ever see him anywhere near 51?

3 A. That's the only place I saw him on Powell Street.

4 Q. Okay.

5 A. That was the only place I saw him.

6 BY MR. LUMUMBA: Okay. Hold on one second.

7 (Defense Counsel confer briefly.)

8 BY MR. LUMUMBA: No further questions.

9 BY THE COURT: Is she finally excused?

10 BY MR. LUMUMBA: Yes, sir.

11 BY THE COURT: You are free to go.

12 WITNESS EXCUSED.

13 BY THE COURT: Who will you have next?

14 BY MR. LUMUMBA: Okay, we would call at this
15 time Charita Flowers.

16 BY THE COURT: Charita Flowers.

17 BY MR. LUMUMBA: Well, actually her name is,
18 her last name is-- well, it used to be Flowers. I
19 can't think of what it is right now.

20 (Mr. Evans and Mr. Lumumba confer out of the
21 hearing of the Court Reporter. Witness enters
22 courtroom.)

23 BY THE COURT: If you will come around up
24 here, ma'am. Have you been sworn?

25 BY THE WITNESS: No, sir.

26 CHARITA FLOWERS,

27 a black female called to testify as a witness by the
28 Defendant, having first been duly sworn, testified as
29 follows, to-wit:

1 **BY THE COURT:** Have a seat up here. State
2 your name for the record.

3 **BY THE WITNESS:** Charita Flowers.

4 **BY THE COURT REPORTER:** Would you spell your
5 first name, please.

6 **BY THE WITNESS:** C H A R I T A.

7 **BY THE COURT:** Come here. If y'all would come
8 here. I may can help you.

9 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
10 THE JURY AS FOLLOWS:)

11 **BY THE COURT:** Are you trying to decide
12 whether you have got the name or not?

13 **BY MR. EVANS:** Yes, sir.

14 **BY THE COURT:** Is that the same lady?

15 **BY MR. LUMUMBA:** Yeah, that's her.

16 **BY MR. EVANS:** Oh, Baskin, okay.

17 (The Court shows Counsel a document.)

18 **BY MR. HORAN:** Okay.

19 END BENCH CONFERENCE

20 DIRECT EXAMINATION BY MR. LUMUMBA:

21 Q. Okay, ma'am, could you state your name for the
22 record, please.

23 A. Charita Flowers.

24 Q. Okay, do you have Baskin? You ever heard that name
25 before?

26 A. Yes.

27 Q. Is that your name also?

28 A. No, I was married before.

29 Q. Okay, what was your name then?

1 A. Charita Flowers Baskin.

2 Q. Okay, Ms. Baskin, are you related to someone in the
3 courtroom here?

4 A. Yes, sir.

5 Q. Who are you related to?

6 A. The Defendant, Curtis Flowers.

7 Q. And do you have other members in your family like
8 brothers and sisters?

9 A. Yes.

10 Q. And what does that consist of?

11 A. One brother and three sisters.

12 Q. Okay, in addition to Curtis, do you have another
13 brother?

14 A. Yes.

15 Q. What is his name?

16 A. Archie Flowers.

17 Q. Okay. Now and where do you presently live?

18 A. At 715 Dennis in Winona.

19 Q. And how long have you lived in Winona?

20 A. 22 years.

21 Q. 22 years.

22 A. All my life.

23 Q. Is that how old you are?

24 A. Yes, sir.

25 (Pause while Mr. Lumumba confers with the
26 Defendant.)

27 Q. Okay, Charita, I would like to call your attention
28 to back in 1996, and ask you do you recall somewhere after
29 the 4th of July ever receiving a call from anybody at Tardy's

1 store? I'm not asking you what they said, but I want to
2 know if you ever received a call?

3 A. Yes, sir.

4 Q. And where were you at when you received the call?

5 A. At my mother's house.

6 Q. Who receives phone calls at your mother's house?

7 A. Everyone who lived there. Whoever answer the
8 phone; yes, sir.

9 Q. Okay, does Curtis receive any calls at your
10 mother's?

11 A. Yes, sir.

12 Q. Now do you know about when this occurred when you
13 got this call, and how many times it occurred?

14 A. Twice. Around the 4th.

15 Q. And did the person identify themselves?

16 A. Yes, sir. The first phone call I received they
17 did.

18 Q. Who did they say they were?

19 A. Mrs. Tardy.

20 Q. Okay, and did you get another phone call?

21 A. Yes, sir.

22 Q. Did that person identify themselves?

23 A. No, they didn't.

24 Q. Okay. Now as to the first phone call, after you
25 got that phone call, did you have a conversation? Did you
26 say anything to Curtis?

27 A. Yes, I did.

28 BY MR. HORAN: Your Honor, okay. Just as long
29 as he doesn't go into the substance of the

1 conversation.

2 BY MR. LUMUMBA:

3 Q. You said something to Curtis?

4 A. Yes, I did.

5 Q. And what did you say to Curtis?

6 A. I told him that Mrs. Tardy called and wanted him, I
7 mean wanted to know why he didn't, wasn't coming to work, and
8 he said no, he wasn't going.

9 Q. I see.

10 BY MR. LUMUMBA: Okay.

11 BY MR. HORAN: No questions.

12 BY MR. LUMUMBA: I have no questions.

13 BY THE COURT: Okay. Is she finally excused?

14 BY MR. LUMUMBA: Yes, sir.

15 BY THE COURT: You are free to go, ma'am.

16 WITNESS EXCUSED.

17 BY MR. LUMUMBA: I would also call as a
18 witness now-- do you want my next witness?

19 BY THE COURT: Yes, sir.

20 BY MR. LUMUMBA: Okay, that would be Archie
21 Flowers.

22 BY THE COURT: Okay.

23 BY MR. LUMUMBA: Archie Flowers, Sr.

24 BY THE COURT: Archie Flowers, Sr.

25 (Witness enters the courtroom.)

26 BY THE COURT: Come up here, Mr. Flowers, if
27 you will. Have you been sworn?

28 BY THE WITNESS: No.

29 BY THE COURT: Would you raise your right

1 hand.

2 ARCHIE FLOWERS, SR.,

3 a black male called to testify as a witness by the Defendant,
4 having first been duly sworn, testified as follows, to-wit:

5 BY THE COURT: Have a seat up here, please
6 sir. State your name for the record.

7 BY THE WITNESS: Archie Lee Flowers.

8 DIRECT EXAMINATION BY MR. LUMUMBA:

9 Q. Okay, and are you a Junior or a Senior?

10 A. Senior.

11 Q. Okay, you have a son by the name of Archie also?

12 A. Right.

13 Q. Mr. Flowers, could you share with us, please, do
14 you have a family?

15 A. Yes, sir.

16 Q. What does that consist of? Wife, children? How
17 many? Are you married?

18 A. Six kids. Right, wife.

19 Q. And you have a wife?

20 A. Right.

21 Q. And is she in the courtroom today?

22 A. Yes, sir.

23 Q. Okay, would you identify her for the record,
24 please.

25 BY MR. EVANS: Your Honor, that is not proper.

26 BY THE COURT: That is not relevant. Let's
27 move on.

28 BY MR. LUMUMBA:

29 Q. Okay. Now how many, how many boys and girls or

1 whatever you have?

2 A. I have two boys, two boys and four girls.

3 Q. Do you work, Mr. Flowers?

4 A. Yes, sir.

5 Q. And what is it that you do?

6 A. I'm a clerk at the store, cashier.

7 Q. And what is the name of the store you work at?

8 A. Kelly's Stop and Go.

9 Q. You ever heard of a store called Jeff's?

10 A. That's right. That's the name. You know, that's
11 the man that owns the store.

12 Q. And do you know a person by the name of Troy or
13 something like that?

14 A. Troy, he used to run the store.

15 Q. Okay, now what I would like to ask you now, Mr.
16 Flowers, is do you recall the day that the incident occurred
17 at Tardy's Furniture Store?

18 A. Right.

19 Q. And do you know whether or not you saw your son on
20 that day?

21 A. Right. He came to the store.

22 Q. And do you know if you told him anything while he
23 was there?

24 A. Right. I was telling him about the killing.

25 Q. That occurred where?

26 A. Out at the store.

27 Q. Okay. Now do you know for certain exactly what
28 time he came to your store?

29 A. I sure, I never looked up at the clock.

1 Q. Okay. And did he stay at the store, or did he
2 leave the store?

3 A. He stayed at the store a while.

4 BY MR. LUMUMBA: I have no further questions
5 of Mr. Flowers.

6 BY MR. EVANS: Very briefly, Your Honor.

7 CROSS-EXAMINATION BY MR. EVANS:

8 Q. Mr. Flowers, if I understand what you are saying is
9 you don't know what time Curtis came by the store?

10 A. I do not.

11 Q. But you know that when he stopped by the store, it
12 was after the murders had already taken place?

13 A. Right.

14 Q. And it was far enough after the murders that you
15 had already heard about it; is that right?

16 A. I had just-- some guy was on the outside talking
17 about it.

18 Q. Okay.

19 BY MR. EVANS: Give me one second, Your
20 Honor.

21 (Mr. Evans finds an exhibit.)

22 Q. And that's the closest you can pin down the time
23 that he came down to the store?

24 A. Like I say, I don't know what time it was.

25 BY MR. EVANS: Okay, nothing further.

26 REDIRECT EXAMINATION BY MR. LUMUMBA:

27 Q. When you saw Mr. Flowers, do you have any idea how
28 long it had been since the incident at Tardy's had taken
29 place? Do you know how long it had been?

1 A. Oh, maybe about ten minutes or something.

2 Q. Okay. Now is that ten minutes since it had taken
3 place or ten minutes since you heard about it?

4 A. Ten minutes since I heard about it. Some guys on
5 the outside were talking about it.

6 BY MR. LUMUMBA: I don't have any further
7 questions.

8 BY THE COURT: Is he finally excused?

9 BY MR. LUMUMBA: Yes, he is.

10 BY THE COURT: Okay, you are free to go.

11 WITNESS EXCUSED.

12 BY THE COURT: Who will you have next?

13 BY MR. LUMUMBA: Can I approach for a moment,
14 Judge?

15 BY THE COURT: Uh-hum.

16 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
17 THE JURY AS FOLLOWS:)

18 BY MR. LUMUMBA: I don't believe we have
19 anybody else. I need to go out and check and make
20 sure. Harvey was supposed to be going out and
21 check.

22 BY THE COURT: Okay.

23 BY MR. LUMUMBA: Do you want me to just go out
24 there and see?

25 BY THE COURT: If you don't mind. Here he
26 comes.

27 END BENCH CONFERENCE.

28 BY MR. LUMUMBA: At this time the Defense
29 would rest, Judge.

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DEFENDANT RESTS.

BY THE COURT: Okay.

BY MR. LUMUMBA: We have a motion.

BY THE COURT: I understand. Ladies and gentlemen, we have reached another point. The Defense has rested. It is my understanding from talking to the attorneys there may be a few rebuttal witnesses in the morning. But we ought to be able to get this case to the point where y'all can make your decision on it some time tomorrow. We have to-- they have to meet with me and consult with me about getting the instructions together. I think the best procedure and the most efficient procedure is for me to do that with them first thing in the morning and have those ready to go after, so that we can go on into argument after the completion of testimony.

To that end, we will start in the morning at 10 o'clock. Now we will start up here a good deal before that and be working on that so we will have that out of the way, and I think that will help us save some time, but I won't need y'all until 10 o'clock in the morning. Okay, I will see y'all in the morning.

JURY LEAVES THE COURTROOM. TIME IS 6:27 PM.

BY THE COURT: All right, Mr. Lumumba, do you want to renew your motion?

BY MR. LUMUMBA: Yes, Judge. We renew the motion, and I will just incorporate by reference

1 the argument I made at the time that we moved for a
2 directed verdict of not guilty. We at this time
3 ask for a directed verdict of not guilty too.

4 **BY THE COURT:** All right, sir. That Motion is
5 overruled. Now look. Let's-- I want to do, like I
6 told them, I want to do the instructions in the
7 morning so we will have that done. I propose that
8 we be here at 8:00. Okay? All right, 8 o'clock in
9 the morning. See you then.

10 **BY MR. HORAN:** How about 7:30?

11 **BY THE COURT:** No, not 7:30. 8 o'clock.
12 Court is adjourned--

13 **BY MR. LUMUMBA:** --Judge, could we--

14 **BY MR. EVANS:** Your Honor, well, the jury is
15 not in here. For the record, I would like the
16 Court to voir dire the Defendant on his decision.

17 **BY THE COURT:** Okay. You have got no problem
18 with that, I assume?

19 **BY MR. LUMUMBA:** Oh, no, no.

20 **BY THE COURT:** Come around, Mr. Flowers. I
21 think we can do this at the bench if that suits
22 you.

23 **BY MR. LUMUMBA:** It doesn't matter, however
24 you want to do it, Judge.

25 **BY THE COURT:** Just stand right here, Mr.
26 Flowers. Mr. Flowers, you have now rested your
27 case. I want you to understand that you have,
28 you have the right to testify but that you also
29 have the right not to, and if you decide not to

1 testify, that I will instruct the jury that they
2 can't hold that fact against you. Do you
3 understand that?

4 BY THE DEFENDANT: Yes, sir.

5 BY THE COURT: Have you discussed that with
6 him, Mr. Lumumba?

7 BY MR. LUMUMBA: Yes.

8 BY THE COURT: He understand what his
9 constitutional rights are in relation to
10 testifying?

11 BY MR. LUMUMBA: Yes, I believe he does.

12 BY THE COURT: Okay. All right. All right,
13 we are adjourned until in the morning at--

14 BY MR. LUMUMBA: --Judge, let me say this.
15 Let me see. There was something. 8 o'clock in the
16 morning; right?

17 BY THE COURT: Uh-huh. I have been here at 8
18 o'clock every morning.

19 BY MR. LUMUMBA: No, no. I have no problem
20 with 8 o'clock in the morning. I am just trying to
21 remember what I was trying to tell you. I was just
22 talking.

23 BY THE COURT: Oh, okay.

24 BY MR. LUMUMBA: It was important, Judge, but
25 I can't think of what it is. But anyway, in any
26 event I just want to say that, I just want to, you
27 know, remind the Court that our resting was, of
28 course, because we could not do the deposition that
29 I requested.

1 **BY THE COURT:** All right, sir. You made your
2 record on that.

3 BY MR. LUMUMBA: Okay.

4 **BY THE COURT:** Okay.

5 (NOTE: Any discussion concerning a deposition
6 was not done in the presence of the Court Reporter
7 on this date, but a record of it was made on the
8 following day, March 30, 1999, as will be noted.)
9 COURT WAS RECESSED FOR THE DAY ON MARCH 29, 1999,
10 AT 6:40 P.M.

1 (COURT CONVENED IN THE COURTROOM ON MARCH 30,
2 1999, FOR THE CONSIDERATION OF JURY INSTRUCTIONS WITH THE
3 COURT, ALL COUNSEL PRESENT WITH THE EXCEPTION OF MR. HORAN,
4 AND THE DEFENDANT PRESENT BUT WITH THE JURY ABSENT:)

5 COURT'S INSTRUCTIONS: **BY THE COURT:** These are my four
6 instructions. Do you want to see them?

7 (Court's Instructions handed to Mr. Lumumba.)

8 **BY THE COURT:** Well, I tell you the truth.
9 Here is what-- let me just give you these while I'm at it.
10 Those I know I'm going to give.

11 (Long pause while the Court and Counsel were
12 reading each other's instructions.)

13 **BY MR. LUMUMBA:** Judge, these are fine. C-2,
14 I still have. Mr. Freelon wants to talk to you about one
15 line in C-1 and see if we can get it added.

16 (Mr. Lumumba hands some instructions to Mr.
17 Evans.)

18 **BY MR. FREELON:** Judge, there is one line in
19 here. I hand you what we have used in a couple of other
20 trials as the Judge's instruction. I apologize for not
21 making a copy of the third line starting right here. We will
22 ask that the Court-- can you hold it around for one second?

23 **BY THE COURT:** I'm sorry.

24 **BY MR. FREELON:** That's all right. Right here
25 where it starts, "Your decision about what happened must be
26 based entirely upon the evidence which is the testimony and
27 the exhibits produced before the Court during this trial and
28 must not be based upon any questions, any guesswork or
29 speculation." But the last part, unless I overlooked it,

1 being "Furthermore, your decision must not be influenced by
2 sympathy or by the bias or prejudice based upon race,
3 religion, color or any other such manner." Now I could have
4 been looking at it--

5 **BY THE COURT:** No, no, I see. You are talking
6 about this part about race?

7 **BY MR. FREELON:** Correct, sir.

8 **BY THE COURT:** Okay.

9 **BY MR. FREELON:** We ask that the Court--

10 **BY THE COURT:** Let me see.

11 (Pause while the Court reads.) Show him what
12 you are talking about and then come back. I don't have any
13 problem with that.

14 **BY MR. FREELON:** You want me to?

15 **BY THE COURT:** Yeah, I'm going to look where I
16 put it in.

17 (Mr. Freelon shows the instruction to Mr.
18 Evans.)

19 **BY MR. EVANS:** Basically, Your Honor, we
20 object for one reason. In your instruction that you normally
21 give, you tell them what their decision has to be based on.
22 If we start singling out what it can't be based on, there is
23 a whole lot of things it can't be based on.

24 **BY THE COURT:** I have already got in my
25 instruction, "You should not be influenced by bias, sympathy
26 or prejudice."

27 **BY MR. EVANS:** Yes, sir.

28 **BY THE COURT:** I don't see where it hurts to
29 add "race or color" there.

1 BY MR. EVANS: It just brings attention to it.

2 BY THE COURT: Well, I don't have any problem
3 with that. I'm going to grant that. Let me see what you
4 have told me.

5 (Mr. Freelon approaches the bench with the
6 instruction.)

7 BY THE COURT: You need to stick around so I
8 can show you where I'm going to put it. Let me read to you
9 where I'm going to put it. In the second page of my
10 instruction I have got, "You should not be influenced by
11 bias, sympathy or prejudice," and then I'm going to add to
12 that sentence "based on race, religion, color, or any such
13 manner." Okay.

14 BY MR. FREELON: That is correct.

15 BY THE COURT: All right, Linda, can you do
16 that for me?

17 (Off the record while the Court Reporter typed
18 the change to Instruction C-1.)

19 BY MR. LUMUMBA: Judge, whenever you want us
20 to do it, I do have a motion which is outside, outside the
21 realm of just the instructions, a short motion. Do you want
22 me to raise it now?

23 BY THE COURT: Well, I have gotten into the
24 instructions. Why don't we get that-- it doesn't look like
25 y'all have got a lot. Let me get that done, and then I will
26 hear it.

27 Have you got any objection to any of those, Mr.
28 Evans?

29 BY MR. EVANS: No, sir.

1 BY MR. FREELON: We have got one more
2 instruction, Your Honor. I thought I printed it out this
3 morning.

4 BY THE COURT: That's okay. I'm still on
5 mine. Is there any objection to C-1, 2, 3, 4, 5 and 6?

6 BY MR. LUMUMBA: All right. No, sir.

7 BY MR. EVANS: None from the State.

8 BY THE COURT: None from the State. Okay, C-1
9 of course, is Instruction Number 1. C-2 is Instruction
10 Number 2. C-3 is Instruction Number 3. C-4 is Instruction
11 Number 4. C-5 is Instruction Number 5. And C-6 is
12 Instruction Number 6. Okay, let's see.

13 INSTRUCTION NO. S-1: BY THE COURT: Did y'all give me
14 back S-1?

15 BY MR. LUMUMBA: Pardon?

16 BY THE COURT: S-1 that you were redoing.

17 BY MR. EVANS: S-1?

18 BY THE COURT: That's the one you were
19 redoing.

20 BY MR. EVANS: Oh, okay.

21 BY MR. LUMUMBA: You mean C-1 or S-1?

22 BY MR. EVANS: S-1.

23 BY THE COURT: S-1.

24 BY MR. EVANS: Here is the corrected S-1.

25 BY MR. LUMUMBA: Oh, you corrected S-1?

26 (Instruction S-1 handed to the Court; Pause
27 while he reads.)

28 BY THE COURT: Any objection to S-1?

29 (Pause while Defense Counsel confer.)

1 BY MR. LUMUMBA: No.

2 BY THE COURT: Okay. That will be Instruction
3 number 7.

4 INSTRUCTION NO. S-2: BY THE COURT: What about S-2?

5 BY MR. LUMUMBA: We object to the "acting in
6 concert" part of it. There is no proof of anybody acting in
7 concert that we can see.

8 BY THE COURT: What do you say to that, Mr.
9 Evans?

10 BY MR. EVANS: Your Honor, they are the ones
11 that attempted to bring out that there was someone acting in
12 concert with him when they argued several times to the jury
13 that he was with someone else in the car at the front of the
14 store. So the jury could conclude that he did it by himself,
15 or the jury could conclude that he met someone there at the
16 store and acted in concert with them.

17 BY THE COURT: In light of the testimony from
18 Porky Collins, for whatever it's worth, there is some
19 evidence there that the jury could consider. I'm going to
20 leave it. I'm going to give it as Instruction Number 8.

21 INSTRUCTION NO. S-3: BY THE COURT: And how about
22 S-3?

23 BY MR. LUMUMBA: We don't have any objection
24 to S-3. Hold on one second--

25 BY THE COURT: --And that is Number 9.

26 BY MR. FREELON: Hold on, Judge.

27 BY MR. LUMUMBA: Mr. Freelon is going to
28 address that, Judge. He is looking for it now.

29 BY THE COURT: Okay.

1 (Long pause).

2 BY MR. LUMUMBA: Judge, we do object to this
3 instruction. We know that, for instance, on the last appeal
4 in the other case that there was an objection raised to this
5 instruction. We can't find right now what was stated there,
6 but what occurs to us is that it's a needless amplification
7 of an issue which I don't think is that issue. From what I
8 understand, it says that "A thing is in the presence of a
9 person, in respect to robbery, which is so within his reach,
10 inspection, observation, or control that he could, if not
11 overcome with violence or prevented by fear, retain his
12 possession of it."

13 I think the instruction alone, the murder
14 instruction is clear enough when it says that robbery is an
15 element. I don't think there is any confusion or any real
16 argument that requires this to be added. So that's why I
17 would object to S-3.

18 BY MR. EVANS: Your Honor, briefly, this
19 instruction we have used in every robbery case that I have
20 ever tried. It's a proper instruction, and it informs the
21 jury that someone does not have to have an item taken off of
22 them. It can be taken away from their presence, and it can
23 be taken either by force or violence. It is just a correct
24 instruction.

25 BY THE COURT: I think it properly states the
26 law, and I have given it before myself. So I'm going to give
27 it.

28 BY MR. LUMUMBA: Which number will that be?

29 BY THE COURT: It is number 9. S-3 will be

1 number 9.

2 BY MR. LUMUMBA: We are-- are you about to
3 look at the Defense instructions?

4 BY THE COURT: Yes, sir.

5 INSTRUCTION D-8: BY MR. LUMUMBA: We are withdrawing --
6 I want to tell you what we are withdrawing. We are
7 withdrawing number 8. D-8. Let me make sure I am right.
8 Yeah, D-8.

9 INSTRUCTION NO. D-1: BY THE COURT: Okay, what does the
10 State say to D-1?

11 BY MR. EVANS: As far as that type
12 instruction, the State does not object, but this is not the
13 proper instruction. It leaves out several specific elements
14 and adds some to it. I think the elements that the Court has
15 to instruct is the adequate opportunity to observe the
16 offender; did the witness observe the offender with an
17 adequate degree of attention; did the witness provide an
18 accurate description of the offender after the crime; how
19 certain the witness was of the identification; and how much
20 time passed between the crime and the identification. I
21 think that is the proper instruction that gives those five
22 elements.

23 BY THE COURT: And that is in what case? I
24 forget.

25 BY MR. EVANS: Just one second, Your Honor.

26 (Pause while State's Counsel looks it up.)

27 BY MR. EVANS: Davis v. State is one of the
28 cases that this instruction was approved in. It has been
29 approved in numerous cases.

1 **BY THE COURT:** Okay, there is a case that sets
2 those factors out.

3 **BY MR. EVANS:** Yes, sir.

4 **BY MR. FREELON:** The factors are in there.

5 **BY THE COURT:** Huh?

6 **BY MR. FREELON:** The factors are in there.

7 **BY MR. EVANS:** No, sir.

8 **BY MR. LUMUMBA:** Well, let me just say this,
9 Judge.

10 **BY THE COURT:** I will give the identification
11 instruction consistent with what the case law is. I will do
12 that.

13 **BY MR. LUMUMBA:** Okay. So let's see what --
14 he can name the--

15 **BY MR. EVANS:** I will do better than that. I
16 will give you an instruction that you can offer if you would
17 like to.

18 **BY THE COURT:** Do you want to look at his and
19 see if--

20 **BY MR. LUMUMBA:** I will look at it. And I
21 thought, we think we have the factors. I do see in the one,
22 two, third paragraph where we talk about the length of time
23 that elapsed between the incident and the second to the last
24 time. I can tell you right now I will change that line to
25 say the length of time that elapsed between the incident in
26 question and the opportunity the witness had to observe the
27 defendant.

28 **BY MR. FREELON:** Let me see.

29 **BY MR. EVANS:** Unless it is given as it has

1 been approved before, I would object to the instruction being
2 given.

3 BY MR. LUMUMBA: Do you have one here?

4 BY MR. EVANS: Yeah. That is it right there.

5 (Pause while Defense Counsel looks at the
6 instruction.)

7 BY MR. LUMUMBA: Okay, we don't have a problem
8 with this other than we feel that the last sentence in our
9 instruction should be added. And Judge, may we-- we don't
10 have any problem with the factors. He has a short
11 instruction which lists the factors, and you can look at it
12 here.

13 **BY THE COURT:** Okay. The last line that y'all
14 have is not a correct statement of the law though in this
15 case.

16 BY MR. LUMUMBA: "If after examine all of the
17 testimony and evidence in the case, you have a reasonable
18 doubt as to the identity of the Defendant as the perpetrator
19 of the offense charged, you must find the Defendant not
20 guilty." Isn't that true?

21 **BY THE COURT:** It's more than a reasonable
22 doubt. It's a circumstantial case. It's more than a
23 reasonable doubt.

24 BY MR. LUMUMBA: Oh, right. Okay, well, I'm
25 sorry. Well, I would like to restate that. I agree with
26 you. If from the examination of testimony and the evidence
27 in this case--

28 BY MR. EVANS: Your Honor, that is still not
29 going to be proper. This instruction is framed, I believe,

1 as where they can argue it on each individual witness that
2 testified. This isn't a case where there is only one
3 witness. I think viewing the instructions as a whole, if
4 they don't find the elements, they have got to find him not
5 guilty. But I think it would be improper on that instruction
6 to tell them that if they found that a witness wasn't correct
7 in their identification, that they could find him not guilty
8 because--

9 **BY THE COURT:** --Well, it says after you
10 examine all the testimony and evidence. It doesn't say, it
11 doesn't single out one witness.

12 **BY MR. EVANS:** I need to look at that one.

13 **BY THE COURT:** It says after you examine, or
14 it should read this way. "If after you examine all of the
15 testimony and evidence in this case, you have a reasonable
16 doubt as to the" - and more than a reasonable doubt, "as to
17 the identity of the Defendant as the perpetrator of the
18 offense charged, you must find the Defendant not guilty."

19 **BY MR. EVANS:** Okay.

20 **BY MR. LUMUMBA:** I guess the way--

21 **BY THE COURT:** --I will just add that sentence
22 and put the circumstantial in that paragraph; okay?

23 **BY MR. LUMUMBA:** Right. I want to change it
24 to the circumstantial paragraph.

25 **BY THE COURT:** Okay.

26 **BY MR. LUMUMBA:** Which I think may be-- see if
27 this will sound right. "If after examination of all the
28 testimony and evidence"--

29 **BY THE COURT:** I think it ought to read "If

1 after you examine."

2 BY MR. LUMUMBA: Okay, "If after you examine
3 all the testimony and evidence in the case, you find a"--

4 BY THE COURT: "You have" is okay. "You have
5 a reasonable doubt."

6 BY MR. LUMUMBA: Pardon?

7 BY THE COURT: Let me see.

8 BY MR. LUMUMBA: You have a-- wait a minute.

9 BY THE COURT: Let's see how it is going to
10 be. (Pause).

11 BY MR. LUMUMBA: I got it; I think I got it.
12 "You have a reasonable doubt as to whether the State has
13 excluded every hypothesis consistent with"--

14 BY THE COURT: No, that won't work. It has
15 got to be "reasonable doubt and to the exclusion" is the
16 wording. I don't know how we are going to make that work.

17 BY MR. LUMUMBA: Reasonable doubt...

18 BY MR. EVANS: Your Honor, this instruction is
19 redundant here. There are several places in the instruction
20 you are telling them that if they do not find him guilty
21 beyond a reasonable doubt to the exclusion of every
22 reasonable hypothesis consistent with innocence, they have
23 got to find him not guilty. It is redundant and it really
24 does not fit on this instruction.

25 BY THE COURT: Okay. I don't think I can, I
26 don't think we can word that where it's going to make much
27 sense by adding that. I think I have given that, I have told
28 them that all through these instructions, and I'm sure before
29 I get through, going to tell them some more. So I'm going to

1 refuse-- what number is that?

2 BY MR. LUMUMBA: D-1.

3 BY THE COURT: I'm going to refuse D-1 on that
4 basis.

5 INSTRUCTION NO. C-7: BY THE COURT: Now I am going to
6 substitute in place of D-1 an instruction that says the same,
7 essentially the same thing. It's an identification
8 instruction. I'm going to label it C-7; is that right?

9 BY MR. LUMUMBA: Can we see it one more time,
10 Judge?

11 BY THE COURT: Sure.

12 BY MR. LUMUMBA: This will be C-7?

13 BY THE COURT: Uh-hum.

14 (Pause while Defense Counsel read.)

15 BY MR. FREELON: Judge, the problem that we
16 have with not putting something at the end of it, it tells
17 them to appraise the identification testimony, but it doesn't
18 tell them after they get through appraising it, how to use it
19 when they appraise it. And that's the problem we have with
20 not putting anything at the end of it. It is almost like we
21 are saying we want you to appraise it, but once you get
22 through appraising it, what do you do? What do you do with
23 it? How do you take it under consideration? It just stops.

24 BY MR. EVANS: And in that element instruction
25 it instructs them what to do with it.

26 BY THE COURT: It does. These instructions
27 must be read as a whole, and I'm going to tell them that in
28 C-1. And there are numerous instructions that don't have,
29 don't complete with all that language that way. What you

1 want? You want to make a copy?

2 BY MR. LUMUMBA: Yeah.

3 BY THE COURT: Okay. That will be-- let me
4 mark on it first, and then you will have a copy of what it
5 is. C-7 will be Instruction Number 10.

6 INSTRUCTION NO. D-2: BY THE COURT: Any objection to
7 D-2?

8 BY MR. EVANS: Is that not in the Court's
9 instructions?

10 BY THE COURT: It's not, and it needs to be.

11 BY MR. EVANS: No objection to it. Your
12 Honor, and this may not make any difference, but I do want to
13 bring it to the Court's attention. The Defense instructions
14 do not have what Judicial District of Harrison County this
15 is. I don't know that it is absolutely necessary, but I just
16 want to point that out.

17 BY MR. LUMUMBA: We don't have what?

18 BY MR. EVANS: Which Judicial District of
19 Harrison County it's in.

20 BY MR. LUMUMBA: Yeah, we can amend it orally
21 by saying that we are in-- what is this? The First District?

22 BY THE COURT: Yeah, it's the First District.

23 BY MR. LUMUMBA: I don't think it makes any
24 difference.

25 BY THE COURT: I'm going to hold if that is
26 error, it is harmless. They may hold something else, but I
27 can't believe it.

28 BY MR. FREELON: D-2 is 11?

29 BY THE COURT: Yeah, uh-hum.

1 INSTRUCTION NO. D-3: **BY THE COURT:** Who about D-3?

2 BY MR. EVANS: We object to D-3. That is
3 trying to tell the jury how to weigh the testimony of
4 witnesses which is improper anyway to tell the jury how to
5 do.

6 **BY THE COURT:** C-1 covers what they have to do
7 in evaluating that. D-3 is refused.

8 INSTRUCTION NO. D-4: BY MR. EVANS: I object to D-4.
9 This is an attempt to define the burden on the jury--

10 **BY THE COURT:** It's a two theory instruction.

11 BY MR. EVANS: Yes, sir. It's a two theory
12 instruction, but the Court has instructed in several cases
13 that it's improper to try to define what "reasonable doubt"
14 is. It's also improper, I think, to define what "reasonable
15 doubt to the exclusion of every reasonable hypothesis
16 consistent with innocence" is.

17 **BY THE COURT:** It may be, but the Court has
18 numerous times approved two theory instructions.

19 BY MR. EVANS: And in King v. State, 421 So.2d
20 1009, the Court said, "A separate two theory instruction does
21 not have to be given if a circumstantial evidence instruction
22 is given."

23 **BY THE COURT:** Let me see that case.

24 BY MR. EVANS: This is the footnote from it,
25 right at the bottom.

26 (Hands book to the Court.)

27 BY MR. LUMUMBA: Judge, I think this is a
28 circumstantial evidence instruction.

29 **BY THE COURT:** Okay. Somebody go find me King

1 v. State. I will reserve my ruling on this.

2 BY MR. LUMUMBA: Well, let me just say our
3 position is that this is a circumstantial evidence
4 instruction. No other one has been given. I think that's
5 what this is.

6 BY MR. EVANS: No, sir. This is the two
7 theory instruction. A circumstantial instruction is when
8 they are advised burden of proof is beyond a reasonable
9 doubt.

10 BY THE COURT: Well, I'm going to look at it
11 before I rule.

12 BY MR. LUMUMBA: So you are reserving opinion
13 on D-4?

14 BY THE COURT: Yeah, I want to look at a
15 little law before I do that.

16 BY MR. FREELON: Judge, can you also look at
17 Parker v. State, 606 So.2d 1132?

18 BY THE COURT: Wait a minute. Give it to me
19 again. Give me the cite.

20 BY MR. FREELON: 606 So.2d 1132.

21 BY THE COURT: Southern 2nd?

22 BY MR. FREELON: Southern, right. Parker v.
23 State.

24 BY THE COURT: All right, and give me the last
25 number.

26 BY MR. FREELON: 1132.

27 BY THE COURT: Okay, give me the cite off of
28 King.

29 BY MR. EVANS: King is 421 So.2d 1009.

1 BY MR. FREELON: As a matter of fact, Your
2 Honor, if you want the case, I have the case here.

3 BY THE COURT: You have got Parker?

4 BY MR. FREELON: Yes.

5 BY THE COURT: Okay, I will get it in a
6 minute.

7 INSTRUCTION NO. D-5: BY THE COURT: What do you say to
8 D-5?

9 BY MR. EVANS: I don't think D-5 is
10 necessary. I think the elements instruction of S-1 tell the
11 jury what they have to find, and per se by that instruction
12 they have got to find that he was there before they can find
13 him guilty, so it is repetitive.

14 BY MR. LUMUMBA: I would amend this
15 instruction to say in the second line that, "present
16 competent evidence that proves beyond a reasonable doubt and
17 to every, and to the exclusion of every reasonable
18 hypothesis." However that, that language you are talking
19 about; I can't remember.

20 BY THE COURT: Yes, sir.

21 BY MR. LUMUMBA: Then after that, I think it's
22 an appropriate instruction. I think it is real-- there is a
23 real question in this case as to whether the Defendant was
24 present, and I think there is nothing wrong with the Judge
25 instructing them.

26 BY MR. EVANS: Also, besides the fact that
27 they have already been instructed on the law, I don't think
28 it's proper or correct to put in there the language and to
29 have, "If you have any reason to believe that the evidence

1 presented by the Defendant to the effect that he did not
2 commit the crime charged is true or that it's probably true."
3 We are getting into the fact that we are telling them
4 different burdens. They have been given the proper burden of
5 proof--

6 **BY THE COURT:** --That's what concerns me about
7 that instruction. Y'all will have to show me some authority
8 that that is the law before I will grant that.

9 INSTRUCTION NO. D-6: **BY THE COURT:** Okay. D-6, I have
10 given or given something similar.

11 **BY MR. LUMUMBA:** So you will give D-6?

12 **BY THE COURT:** Well, I think I already have.

13 **BY MR. LUMUMBA:** You have?

14 **BY MR. EVANS:** I think that's in the Court's
15 instructions.

16 **BY THE COURT:** I gave it as Instruction Number
17 2. So it's refused as repetitive.

18 **BY MR. LUMUMBA:** D-6 is refused. Okay.

19 **BY THE COURT:** I mean it's not-- it has been
20 given. This one is.

21 INSTRUCTION NO. D-5: **BY MR. LUMUMBA:** Okay. Judge, Mr.
22 Freelon does have authority for D-5.

23 **BY MR. FREELON:** D-5, the cite, Your Honor,
24 would be 451 So.2d 208.

25 **BY THE COURT:** 2 what?

26 **BY MR. FREELON:** 208.

27 **BY THE COURT:** What is the style of that case?

28 **BY MR. FREELON:** Young v. State of
29 Mississippi.

1 INSTRUCTION NO. D-7: **BY THE COURT:** D-7?

2 BY MR. LUMUMBA: D-7.

3 BY MR. EVANS: D-7, we object to. The Courts
4 have said on many occasions the only time that this
5 instruction should be given is on accomplices.

6 **BY THE COURT:** Is what?

7 BY MR. EVANS: When it's given on
8 accomplices. It is improper to give this instruction
9 singling out the testimony of law enforcement officers or any
10 other groups other than accomplices.

11 BY MR. LUMUMBA: I know of no cases where it
12 says that.

13 **BY THE COURT:** Well, it singles out one set of
14 testimony over another, and I think that's improper. So it's
15 refused.

16 BY MR. LUMUMBA: So that is refused, Judge?

17 **BY THE COURT:** Yes, sir.

18 INSTRUCTION NO. D-8: BY MR. EVANS: You withdrew 8?

19 BY MR. LUMUMBA: Yeah. I withdrew 8.

20 BY MR. EVANS: Is that all of them?

21 INSTRUCTION NO. D-9: **BY THE COURT:** No, I have got a
22 D-9. Part of it I know-- I haven't even read it all yet, but
23 part of it has got to be changed because it doesn't have the
24 circumstantial stuff in there.

25 BY MR. LUMUMBA: Yeah.

26 **BY THE COURT:** Don't we have this? Isn't that
27 in S-1?

28 BY MR. EVANS: S-1 is in that.

29 BY MR. FREELON: S-1.

1 **BY THE COURT:** I think it is covered in S-1.

2 BY MR. LUMUMBA: We will withdraw.

3 **BY THE COURT:** Okay.

4 (Instruction No. D-9 was withdrawn.)

5 INSTRUCTION NO. D-4: **BY THE COURT:** Mr. Freelon, let
6 me see your case. Parker-- well, either one. If you have
7 got both of them, I will take both of them. Parker and
8 Young.

9 BY MR. FREELON: Young is a little bit light.
10 That one and the State, we want to make a copy.

11 **BY THE COURT:** Okay.

12 (Off the record while the Court reads.)

13 **BY THE COURT:** Do you want to see Parker?

14 BY MR. EVANS: Yes, sir.

15 (Case handed to State's Counsel.)

16 **BY THE COURT:** You don't have to read it all.
17 He has got it highlighted, underlined.

18 BY MR. EVANS: Okay.

19 (Pause for Counsel to read.)

20 **BY THE COURT:** I need that back.

21 BY MR. EVANS: Oh, okay. I'm sorry.

22 (Case handed back to the Court.)

23 **BY THE COURT:** Okay, having read that, what do
24 you say?

25 BY MR. EVANS: We don't object.

26 **BY THE COURT:** Okay. It has that language in
27 there. There is a reasonable doubt without the other stuff
28 in the circumstantial stuff, but this instruction that they
29 cited in Parker does not have it either, and they cited that

1 with approval. So I'm going to give it the way you drew it.

2 BY MR. LUMUMBA: This is instruction number?

3 BY THE COURT: It will be, it's y'all's D-4.

4 It will be Instruction Number 12.

5 BY MR. LUMUMBA: D-4 or D-5?

6 BY THE COURT: It has got D-4 on my copy.

7 BY MR. LUMUMBA: Okay.

8 BY MR. FREELON: Number what was D-4?

9 BY THE COURT: D-4 is number 12. I tell you
10 one thing I don't have. I don't have a form of the verdict.
11 Did y'all draw one?

12 BY MR. EVANS: We haven't, but we will.

13 BY MR. LUMUMBA: We can; either way. We have
14 got a computer too.

15 BY THE COURT: Okay, what they do is they have
16 got a form of the verdict that will set forth the verdict.
17 Plus they have a sheet that goes with it where they can just
18 check it rather than having to write it out.

19 BY MR. LUMUMBA: We will look at it.

20 (Pause while Court reads.)

21 INSTRUCTION NO. D-5: BY THE COURT: In this Young case,
22 it cites that instruction, but it doesn't cite any ruling
23 that I can see.

24 BY MR. FREELON: I think that Young was the
25 very reason the case was reversed because that instruction
26 wasn't given if I'm not mistaken.

27 BY THE COURT: I'm not finding that in here.
28 Of course, I can't read this very well. Can you show me
29 where that part is, where they said that?

1 BY MR. EVANS: Is that in the concurrence, or
2 is that in the opinion?

3 BY MR. FREELON: I think the-- I know this
4 writing is bad. Let me...

5 (NOTE: Print on copy was real light. Pause).

6 BY MR. FREELON: It's right here, Your Honor.
7 "In the case sub judice," or whatever it is, "the jury was
8 left uninstructed on the defendant's alibi defense, and this
9 matter requires reversal."

10 BY THE COURT: I have given an alibi
11 instruction. That is Court's Instruction C-5 or 6 one. I
12 think I have. I thought I had. If not, I'm going to give
13 it.

14 BY MR. EVANS: It's in there.

15 BY THE COURT: It is C-6.

16 BY MR. FREELON: Let me see what C-6 says.

17 BY MR. LUMUMBA: C-6 is identification.

18 BY THE COURT: Huh?

19 BY MR. LUMUMBA: You say C-6. Isn't C-6
20 identification?

21 BY THE COURT: No, C-6 is alibi. C-7, I think
22 maybe is identification. No. Wait a minute; wait a minute.
23 Go ahead on that. I have got something else.

24 BY MR. FREELON: What instruction was C-6?

25 BY THE COURT: Okay, C-6 which is Instruction
26 Number 6, reads this. "'Alibi' means elsewhere or in another
27 place. Alibi is a legal and proper defense in the law. The
28 Defendant is not required to establish the truth of his alibi
29 to your satisfaction, but if the evidence or lack of evidence

1 in this case raises in the minds of the jury a reasonable
2 doubt as to whether the Defendant was present and committed
3 the crime, then you must give him the benefit of the doubt
4 and acquit him."

5 BY MR. LUMUMBA: Yeah. You didn't give out
6 copies of those, did you? You just let us see those; right?

7 BY THE COURT: Right.

8 BY MR. LUMUMBA: Okay, I just thought we had
9 lost them.

10 BY THE COURT: The only question I would have
11 about that now reading it back is to whether it raises in the
12 mind a reasonable doubt and to the exclusion of--

13 BY MR. LUMUMBA: Yeah, I would say--

14 BY THE COURT: --the circumstantial part of it
15 in 6.

16 BY MR. LUMUMBA: I think it should be in
17 there.

18 BY MR. EVANS: I think the Courts have said
19 reading all the instructions as a whole, and I know most of
20 the cases I have seen where circumstantial instructions are
21 given, it's not put in every instruction.

22 BY THE COURT: Yeah, I think I'm going to
23 leave it like it is because I think they have been instructed
24 adequately. And in light of the fact that I have given the
25 alibi instruction, I'm going to refuse D-5.

26 BY MR. LUMUMBA: D-5.

27 BY THE COURT: Now if y'all will do me a form
28 of the verdict, we will have the instructions done.

29 BY MR. EVANS: All right.

1 **BY THE COURT:** Then I will come back and--

2 BY MR. FREELON: --Judge, do you have an
3 instruction on the witness not testifying?

4 **BY THE COURT:** I have got one.

5 BY MR. FREELON: I mean the Defendant.

6 **BY THE COURT:** I think it's Instruction Number
7 4. Let me look and see. Yeah, Instruction Number 4.

8 BY MR. LUMUMBA: That's the one you showed me
9 already?

10 **BY THE COURT:** Yeah.

11 BY MR. LUMUMBA: Can I see it one more time?
12 (Instruction No. 4 handed to Mr. Lumumba.)

13 BY MR. LUMUMBA: You are going to give us
14 copies of all these?

15 **BY THE COURT:** Yeah. I mean I just, we just
16 ran them off this morning.

17 BY MR. LUMUMBA: Okay. No, no, I was just
18 wondering.

19 **BY THE COURT:** We are going to have to get
20 them filed, and when I get them filed, I will get copies
21 made. Okay, let me get the form of the verdict, and we will
22 be ready.

23 (Off the record while the form of the verdict
24 was prepared and the other instructions were filed by the
25 Clerk and copies made by the Court Reporter and given to both
26 Counsel. The State also submitted another instruction while
27 the Reporter was out of the room which will be taken up later
28 as shown.)

29 **BY THE COURT:** Gentlemen, the Clerk pointed

1 out when we filed these that D-2 has the wrong cause number
2 on it. I'm going to change that.

3 BY MR. LUMUMBA: All right.

4 BY THE COURT: Is the 98-00960 the right
5 number? Okay, and then D-4 has no number on it, so I'm going
6 to put one on there.

7 BY THE COURT: While he is typing that
8 instruction, do you want to argue your motion?

9 BY MR. LUMUMBA: Yes, Judge. We would raise
10 an objection-- well, not raise an objection. We
11 would move to, first of all, to reopen our case and
12 to ask the Court to arrest Melissa or Melinda
13 Bingham and to bring her here. We did properly
14 serve her. We did everything we could, and we told
15 her to be here on two or three different
16 occasions. We were told that she had a medical
17 problem, but if the Court doesn't feel that that is
18 sufficient not to depose her, if there is no law to
19 depose her, I guess we are left without any other
20 alternative.

21 So we think her testimony is important just
22 for the purposes of the Court. I'm going to ask to
23 have marked and tendered to the Court a copy of a
24 tape recorded conversation with Melissa Bingham.

25 (INTERVIEW WITH MELINDA K. BINGHAM WAS MARKED
26 AS DEFENDANT'S EXHIBIT D-A TO THE MOTION TO
27 REOPEN.)

28 BY THE COURT: Okay. It's marked for the
29 purposes of this motion. Are you through?

1 BY MR. LUMUMBA: No, I just-- I thought she
2 was marking. This is now marked as D-A. I am
3 submitting it to the Court. My argument would be,
4 Judge, is that Ms. Melissa Bingham, if called,
5 would clearly testify consistently with Roy Harris
6 to the episode involving Clemmie Fleming. She was
7 not actually in the car with Ms. Fleming and Mr.
8 Harris at the time they went, but she does know
9 that Mr. Harris made two trips away from the home,
10 expressing intentions of going up town. She does
11 know that Mr. Harris told her, which is a prior
12 consistent statement from Mr. Harris, that Clemmie
13 was not with him when he saw a person darting
14 across the street, and Mr. Harris told her, in
15 fact, that Clemmie was saying that she was with him
16 but was not.

17 We also believe that if called, she would say
18 that she did not -- Clemmie, I think, in her
19 testimony indicated that Melissa Bingham is the one
20 that told her about what had happened at Tardy.
21 She will point out that that is absolutely untrue.
22 She never told Clemmie what happened which tends to
23 support Mary Fleming's testimony that Clemmie
24 already knew what happened because she went up to
25 the scene after the incident with Mary, and she
26 never did come back home or never came back home at
27 any relevant time anyway to this incident.

28 And Melissa, or Melinda, I'm sorry would also
29 testify that -- I think she would be able to

1 testify to the scene which occurred when Mr.
2 Johnson was taping the testimony of Roy. She would
3 be able to testify that Roy did, in fact, explain
4 to him initially that he did not see or that
5 Clemmie was not with him and did, in fact, tell him
6 she was present at the time that Mr. Johnson showed
7 Roy Harris one photograph of Mr. Curtis Flowers,
8 asked him if that was the man he saw, and Mr.
9 Harris said no, that was not the person who was out
10 there very definitively.

11 So she would be able to support all those
12 things. She was the person who was a girlfriend,
13 lives with at the time with Mr. Harris and I
14 believe still does. So we would move to have her
15 brought to court under whatever circumstances the
16 Court can bring her, have her placed under arrest.
17 We have an address on her so that she can then
18 testify. And we move to reopen our case for that
19 purpose. So that's the end of my presentation.

20 BY MR. EVANS: Your Honor, the Defense has
21 rested. They had plenty of opportunity if they
22 wanted to try to do something to force this witness
23 down here earlier. They chose not to. We are a
24 few minutes away from now the jury being brought
25 back in and doing the rebuttal. There is no sense
26 in delaying matters.

27 BY MR. LUMUMBA: Well, we had every
28 expectation the witness would be here. We didn't
29 know until yesterday that she wouldn't be here. If

1 the Court will recall, we approached the bench and
2 asked and thought we had a tenable solution. We
3 really don't have a reason to disbelieve this woman
4 that she is medically infirm and that she probably
5 has been ordered by her doctor not to be here. But
6 on the other hand, we have a responsibility to
7 represent Mr. Flowers. So we are demanding that
8 she be here. So that is the presentation on that
9 motion.

10 **BY THE COURT:** Okay. The Court finds that
11 when the case was called for trial, the Defense
12 announced ready as did the State and presented its
13 case. Then sometime yesterday afternoon - I can't
14 recall exactly - somewhere about the middle of the
15 afternoon, the Defense brought this matter to the
16 attention of the Court and asked the Court to allow
17 a deposition of Ms. Bingham in Winona or some other
18 place last night. The Court knows of no authority
19 whatsoever for that type of deposition in a
20 criminal case, and therefore, the Court refused to
21 order that. After that, the Defendant proceeded
22 with this case and rested at approximately 6:30,
23 between 6:30 and 7:00 last night. The Court set
24 rebuttal for this morning. The Court, having
25 examined the proposed testimony and the proffered
26 testimony of Melinda Bingham, finds that the same
27 would be cumulative with other testimony, and
28 therefore the Motion is overruled.

29 **BY MR. LUMUMBA:** Okay. I have one motion on

1 that same issue in the alternative. If the Court
2 is denying that Motion, I would ask that the Court
3 allow us to reopen the case and to allow Melinda
4 Bingham's testimony in under the hearsay exception
5 which allows the Court to allow a statement in in
6 the interest of justice. I cite, that is in the
7 hearsay-- get me the rule book. In the exceptions
8 to the hearsay rule, it says that the Court can
9 allow a statement in when it's in the interest of
10 justice. In this case I think her position makes
11 it in the interest of justice.

12 I would also point out that it is not just
13 cumulative because they did attempt to impeach Mr.
14 Harris, and this is a statement which talks about a
15 time prior-- Mr. Harris making a statement to her
16 prior to the time that the document was created
17 which was used to impeach Mr. Harris. So it's a
18 prior consistent statement which is admissible
19 under the rules. Mr. Harris' statement is a
20 consistent statement which is admissible under the
21 rules, and it would buttress his testimony. And it
22 would buttress it in all the other ways and really
23 support it. And I think it is critical because
24 this is really the test of testimony and all the
25 other ways in which we have already cited.

26 But the other thing I would point out to the
27 Court is that as far as Melinda Bingham is
28 concerned, is that-- well, that is basically our
29 representation is that it is, it is a hearsay

1 exception, that it can be admitted under the rules
2 if there is no, if it's in interest of justice.
3 And I think in this instance it is in the interest
4 of justice, and it should be admitted. It is on
5 tape. It could be played to the jury, or we can
6 just admit the transcript if Counsel says that he
7 believes that it's an accurate transcript.

8 And the other thing I was trying to think of,
9 the Court may remember in the O.J. Simpson trial
10 there was a videotape taken of a man who was dying,
11 and the defense was not present at the time of the
12 videotape. This was a gentleman who had done
13 something with blood work, and he was testifying
14 for the prosecution that some of the blood had been
15 used up in a way, in the process of his
16 examination, and so the defense was trying to
17 create the inference that the blood had been used
18 to plant in different places as opposed to the
19 blood just, you know, and so, and so because there
20 had been more blood in the tube and then it wound
21 up being half full or something. The prosecution
22 was allowed to use this videotape deposition
23 statement of this person without any
24 cross-examination, without the defense even being
25 present and present that in court in the interest
26 of justice and exception to the hearsay rule.

27 That same rule which exists in California in
28 the interest of justice exists here in
29 Mississippi. It's the same rules, say it's cited

1 and stated the same way. So that's why I believe
2 that we should be allowed to bring this in, Judge.

3 **BY THE COURT:** Any response?

4 BY MR. EVANS: No, sir.

5 **BY THE COURT:** Okay, the Court finds to allow
6 that would be in essence to allow the deposition
7 that I have already ruled that you couldn't do, and
8 it would also be a one sided deposition in that the
9 State would have absolutely no ability to
10 cross-examine. That Motion is overruled.

11 FORM OF VERDICT INSTRUCTION: **BY THE COURT:** I'm going
12 to give the form of the verdict instruction as Instruction
13 Number 13. This needs to be filed. I'm sorry; that is
14 incorrect. It will not be 13.

15 INSTRUCTION NO. 13: **BY THE COURT:** Have you seen this
16 one about-- this says, "This phase of the trial deals only
17 with the question of the guilt or innocence of the defendant,
18 Curtis Giovanni Flowers. In the event that you find the
19 defendant guilty of Capital Murder, you will then and only
20 consider the appropriate sentence to be imposed." Any
21 objection to that?

22 BY MR. LUMUMBA: I have no objection.

23 **BY THE COURT:** Okay. I'm going to give that,
24 and that will be number 13, and the form of the verdict will
25 be number 14.

26 (FOLLOWING A RECESS, PROCEEDINGS CONTINUED AT
27 9:55 A.M. IN OPEN COURT WITH THE JURY STILL OUT BUT WITH THE
28 COURT, ALL COUNSEL, AND THE DEFENDANT PRESENT:)

29 BY MR. LUMUMBA: Judge, at this time I would

1 make a Motion for a Proffer or Offer of Proof by
2 the District Attorney as to whatever he intends to
3 offer in rebuttal, essentially the witnesses and
4 the nature of the presentation so I could see or we
5 could see whether or not it's actually proper
6 rebuttal. So that's what I am asking the Court at
7 this time.

8 **BY THE COURT:** That Motion is overruled. How
9 much time do y'all want to argue when we get to
10 that point?

11 **BY MR. LUMUMBA:** I would say about an hour and
12 a half.

13 **BY MR. EVANS:** I would say an hour is
14 definitely plenty to talk about everything we went
15 over as far as we concerned.

16 **BY THE COURT:** Okay, I will give y'all an hour
17 and 15 minutes. The jury is ready. Are y'all
18 ready?

19 **BY MR. EVANS:** Yes, sir.

20 **BY THE COURT:** Okay, tell them to bring the
21 jury in.

22 JURY ENTERS THE COURTROOM AT 9:57 A.M. ON
23 MARCH 30, 1999.

24 **BY THE COURT:** Morning. Who will you have
25 first, Mr. Evans?

26 **BY MR. EVANS:** Robert Jennings.

27 (Witness enters the courtroom.)

28 **BY THE COURT:** Mr. Jennings, have you been
29 sworn?

1 you and Investigator John Johnson interviewed Mary Sue Moore?

2 A. Yes, sir.

3 Q. I will ask you specifically if she told you that
4 she had seen Curtis swearing Fila tennis shoes before the
5 murders but that she had not seen him wearing them since the
6 murders?

7 A. Yes, she did.

8 BY MR. EVANS: Tender the witness, Your Honor.

9 BY MR. LUMUMBA: Just briefly. Good morning,
10 ladies and gentlemen.

11 BY THE JURY: Morning.

12 CROSS-EXAMINATION BY MR. LUMUMBA:

13 Q. Good morning, Mr. Jennings. I just have a couple
14 of questions. Mr. Jennings, she never told you that she ever
15 saw Mr. Flowers wearing any Grant Hill Filas, did she?

16 A. She, when we were first talking to her, we were
17 referring to Grant Hills. She did say later just Grant
18 Hill-- or Fila tennis shoes. She did not--

19 Q. --So she never, she never indicated she saw him
20 wearing any Grant Hill Filas, did she?

21 A. No, sir. She was just saying Fila shoes.

22 Q. You know that Fila makes a whole lot of different
23 shoes?

24 A. That's correct.

25 Q. Okay, they make some black shoes; right?

26 A. Right.

27 Q. They make different color shoes?

28 A. That's correct.

29 Q. They make house shoes?

1 A. I'm not sure about house shoes. I know they make
2 all different types of tennis shoes.

3 Q. Okay, but they may make house shoes; you just don't
4 know about that?

5 A. I'm not aware of that.

6 Q. Okay, well, let me also say this is that I notice
7 that you look at your little note there where you have that
8 written down, or did you write that note?

9 A. No, sir. John Johnson actually was writing the
10 notes. I was just present during the interview.

11 Q. Okay. And it also doesn't have any time period.
12 In other words, according to this note, you just have before
13 the killings. It doesn't say when before the killings, does
14 it?

15 A. Correct.

16 Q. It certainly doesn't say the day that it happened?

17 A. No, sir. It just--

18 Q. --It doesn't even say the month that it happened?
19 I'm talking about what you have here in court.

20 A. This does not but I--

21 Q. --It doesn't say the year--

22 BY MR. EVANS: --Your Honor, may the witness
23 finish his answer?

24 BY THE COURT: Yeah, y'all don't talk at the
25 same time.

26 BY MR. LUMUMBA: Okay.

27 BY THE WITNESS:

28 A. During the interview it was explained what we were
29 interviewing her for, and as far as, you know, everyone in

1 that community knew.

2 Q. Yeah, I understand that, but it still doesn't put a
3 time limit on it, does it?

4 A. No, sir.

5 Q. Okay. So in other words, at least according to
6 this note, she never said that it wasn't in the year of 1991
7 or '92 or something like that that she actually saw him
8 wearing Fila tennis shoes and never said Grant Hill. Is that
9 a correct statement?

10 A. No, we were talking to her about during the time of
11 the incident at Tardy Furniture Company.

12 Q. It doesn't say here a date; is that correct? You
13 may have been talking to her about one thing. What I'm
14 concerned about is what she answered to.

15 A. During the interview, we were talking to her, and
16 these were her responses to that interview, not what we were
17 asking her.

18 Q. Well, her response was that she saw it before the
19 times of the death. That's the response; right?

20 A. That's right.

21 Q. Which does not say immediately before the time. I
22 am asking you a specific question as to exactly what you
23 recorded here.

24 A. We were specific with her in the way we were
25 questioning her as to the time prior to the murders at Tardy
26 Furniture Company.

27 Q. Okay, prior--

28 A. --We were not seeking back eight, nine or ten
29 years.

1 Q. Prior to the murders would have been a month
2 before? That would have been prior; right?

3 A. Yes, sir.

4 Q. Prior to the murders would have been six months or
5 a year before?

6 A. That's correct.

7 Q. And you didn't tape it?

8 A. No, sir.

9 Q. So we don't know exactly what you said at least as
10 preserved on tape; is that correct?

11 A. No, sir.

12 Q. And you didn't write it out word for word?

13 A. It is not word for word. This is simply her
14 responses, not our questions.

15 Q. And you don't have your questions recorded
16 anywhere?

17 A. No, sir.

18 Q. Okay, and this was done quite a while ago. It
19 looks like it was done back in--

20 A. --September the 6th of 1996.

21 Q. And you conducted many different interviews?

22 A. That's correct.

23 Q. And the reason you write stuff down so you will
24 remember it; right?

25 A. That's correct.

26 Q. Okay. So all it says here, if I'm not mistaken, is
27 that she saw Curtis with Filas, not Grant Hills before the
28 times of the deaths, not since; right?

29 A. That's correct.

1 Q. Okay. It doesn't say when before or anything like
2 that?

3 A. It does not say when. Like I explained, we were
4 talking about during the times of the crime.

5 Q. Well, I understand. But you understand that
6 sometimes you might be asking questions with one thing in
7 mind, and somebody might answer with something else in mind.
8 You--

9 A. I understand.

10 Q. Okay, you understand, for instance, it even happens
11 up here. An attorney asks somebody a question, and they are
12 thinking about something totally different; right?

13 A. That's correct.

14 Q. Sometimes the attorney does not express himself
15 well enough so the person will know exactly what he is trying
16 to say; right?

17 A. That's true, but if you are interviewing a person
18 and you explain to them or tell them that you are talking
19 about this particular incident, then that's what we are
20 talking about, that particular incident, not last year, year
21 before last or--

22 Q. Well, yes, but you are talking about the incident.
23 That does not mean necessarily to that person that what the
24 person had a year ago is not important to you. You never
25 said that, you never said, "I'm not interested in what
26 happened ten years ago." You didn't say that, did you?

27 A. We explained that we were investigating the Tardy
28 murder case.

29 Q. Did you ever--

1 A. --And that happened just a couple of months prior
2 to when we were interviewing her.

3 Q. Did you ever say that "I'm not concerned about what
4 happened the year before, whether you saw him wearing Filas a
5 year before"? Did you ever say that?

6 A. We just simply asked her if she knew of whether or
7 not--

8 Q. --Mr. Jennings. Excuse me, Mr. Jennings.

9 **BY THE COURT:** You have got to answer yes or
10 no. Then you can explain.

11 **BY MR. LUMUMBA:**

12 Q. Answer my question. Did you ever say to her, "I'm
13 not interested in what happened a year before"?

14 A. We did not ask it in that manner. I explained
15 already what we did ask her.

16 **BY MR. LUMUMBA:** I have no further questions.

17 **REDIRECT EXAMINATION BY MR. EVANS:**

18 Q. Mr. Jennings, did you make it clear to her, you and
19 Mr. Johnson, that the time frame that you were asking if
20 Curtis Flowers wore Fila tennis shoes was around the time of
21 the murders?

22 A. Yes, sir. We did--

23 **BY MR. LUMUMBA:** Objection. Objection,
24 Judge. Objection. Made it clear to her; I think
25 that what is important, and I object because of the
26 ambiguous question. What I would like-- I have no
27 objection to the question as to exactly what he
28 said, but making it clear to her. What does that
29 mean? Making it clear to her in his mind but not

1 necessarily in her mind.

2 BY MR. EVANS: I think it is pretty self-
3 explanatory.

4 BY THE COURT: Overruled. Ask the question.

5 BY MR. EVANS:

6 Q. Did you and Mr. Johnson make it clear to Mary Sue
7 Moore that you were asking if Curtis Flowers wore Fila shoes
8 around the time of the murders?

9 BY MR. LUMUMBA: It is also a leading
10 question, so I object on that basis.

11 BY THE WITNESS:

12 A. Yes, we did.

13 Q. All right, if Mary Sue Moore said that she never
14 told y'all that Curtis Flowers had ever worn Fila shoes and
15 that she specifically never told y'all that she didn't see
16 him wearing them any more after the murders, would that be
17 true or false?

18 A. That would be false.

19 BY MR. EVANS: Nothing further of this
20 witness, Your Honor.

21 BY THE COURT: Is he finally excused?

22 BY MR. EVANS: Yes, sir.

23 BY THE COURT: Mr. Jennings, you are free to
24 go.

25 WITNESS EXCUSED.

26 BY THE COURT: Who will you have next?

27 BY MR. HORAN: Frank Ballard.

28 BY THE COURT: Frank Ballard.

29 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF

1 THE JURY AS FOLLOWS:)

2 BY MR. FREELON: I wanted to make sure that
3 they are not going off into -- I think Mr. Ballard
4 may have had information about someone being mad at
5 Curtis, I think Ms. Tardy being mad at Curtis. And
6 we didn't go off into it. I just wanted to make
7 sure they were not--

8 BY MR. HORAN: --I intend to put proof on to
9 rebut the testimony of Charita Baskin--

10 BY MR. FREELON: --okay--

11 BY MR. HORAN: --that testified regarding them
12 calling Frank back-- I mean calling the Defendant
13 back to work, the circumstances surrounding that.
14 He was summonsed to the store by Ms.--I'm not going
15 to go into the hearsay. He was called down there.

16 BY THE COURT: What?

17 BY MR. HORAN: He was called to the store, and
18 I anticipate laying a predicate first that at that
19 point in time Frank Ballard's responsibilities at
20 the store were to make sure that the customer
21 relationships were fine and employee relationships
22 were fine, primarily because Mr. Tom Tardy was sick
23 at that time. I anticipate putting him on to say
24 he was summonsed to the store by Carmen Rigby with
25 reference to Mr. Flowers without getting into the
26 hearsay of it. Describe her demeanor on that
27 particular day and that he left that day, and he
28 did not return back to work, Mr. Flowers did not on
29 that particular day.

1 **BY THE COURT:** I think he can testify to
2 that. No hearsay though.

3 BY MR. FREELON: That's not-- okay.

4 BY MR. HORAN: It's just to rebut

5 END BENCH CONFERENCE.

6 **BY THE COURT:** Have you been sworn?

7 BY THE WITNESS: Yes, sir.

8 **BY THE COURT:** Okay, have a seat there.

9 **FRANK BALLARD,**

10 a white male called to testify as a witness by the State on
11 REBUTTAL, having first been duly sworn, testified as follows,
12 to-wit:

13 **BY THE COURT:** State your name for the record
14 first, Mr. Ballard.

15 BY THE WITNESS: Frank Ballard.

16 DIRECT EXAMINATION BY MR. HORAN:

17 Q. What relationship do you have to Roxanne Ballard?

18 A. Roxanne Ballard is my wife.

19 Q. I want to direct your attention to July the 16th of
20 1996. On that date did you have any responsibilities down at
21 Tardy Furniture?

22 A. Yes, sir. At the time there were-- we had a
23 shortage of help, and it was a family business, so I would go
24 down and I help-- deliveries, well, just whenever I had time
25 off and afternoons and weekends.

26 Q. Did you have any, did you take over any of the
27 responsibilities that Mr. Tardy had over the course of years
28 at that point in time?

29 A. Well, Mr. Tardy was I believe at the time about 77,

1 78 years old. He was getting a little older, and at occasion
2 Ms. Bertha, my mother-in-law, would call me to come down and
3 help out and talk to new employees, or if there was any way I
4 could in assisting them.

5 Q. Okay, and what about customer relationships? Did
6 you assist in that manner also?

7 A. Yes, sir.

8 Q. Collections and things like that?

9 A. Yes, sir, collections and running down, trying to
10 find, making, you know, research basically, make sure the
11 people are where they are, say they are and if anything I can
12 assist in that respect.

13 Q. Basically accounts services. You serviced the
14 accounts to a certain extent?

15 A. To a certain extent, yes, sir.

16 Q. All right, since the murders at the store, have
17 your duties and responsibilities increased at Tardy
18 Furniture?

19 A. Yes, sir.

20 Q. Would you tell the Court and the jury what you do
21 down there from that time to now?

22 A. Well, basically, I am, with my wife being the
23 owner, I'm the general manager. I go in; I procure orders,
24 interview prospective employees, dismiss them if necessary.
25 Let's see. I do the day to day paperwork, contracts,
26 research the individuals through the credit bureaus. I
27 assist on deliveries, purchase the furniture, work on special
28 orders, enter the information on computer system that we
29 bought later on, just wash the windows, polish the furniture,

1 change flats.

2 Q. Do it all basically?

3 A. Yes, sir.

4 Q. Would you describe the store there at Tardy
5 Furniture? How big is it?

6 A. Our showroom that we work with is approximately
7 18,000 square feet. And we have another 18,000 square feet
8 of storage above it. The building was basically at one time
9 two buildings, and I guess you would call it half a city
10 block. The size of the two showrooms, once-- well, basically
11 is 9,000 and 9,000. The back of them, you have got office
12 space that is in the back, and then in the back of one you
13 have a shop area, a receiving area, and a warehouse basically
14 that we stack our mattresses up in. The building in the
15 front, you have got plate glass window. The walls are
16 probably about three, three foot--

17 BY MR. LUMUMBA: --Judge--

18 A. --wide.

19 BY MR. LUMUMBA: I'm sorry. I don't see where
20 this is proper rebuttal.

21 BY THE COURT: I don't either. This is no
22 relevant. Move on.

23 BY MR. HORAN:

24 Q. Okay. You can move on.

25 A. Okay.

26 Q. I want to hand you, just look at these copies of
27 these documents if you would, and tell me whether or not you
28 can identify what those documents are?

29 A. Yes, sir. I can.

1 Q. Okay, would you just tell the Court and the jury
2 what those documents are?

3 BY MR. LUMUMBA: They are not in evidence yet,
4 Judge.

5 BY MR. HORAN: I'm not asking him to testify
6 about them. I'm just asking what they are.

7 **BY THE COURT:** Well, then why don't you mark
8 them for identification?

9 BY MR. HORAN: I'm not going to introduce all
10 of them, Your Honor.

11 (CLEMMIE FLEMING'S RECORDS FROM TARDY'S WERE
12 MARKED AS STATE'S EXHIBIT S-110 FOR
13 IDENTIFICATION.)

14 BY MR. LUMUMBA: Can I see the two that is
15 marked?

16 BY MR. HORAN: It's just one.

17 BY MR. LUMUMBA: May we approach?

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
19 THE JURY AS FOLLOWS:)

20 BY MR. LUMUMBA: This document considers, has
21 a considerable amount of entries before the time
22 that he acknowledges being the general manager
23 there. I don't see that he is in a position up
24 until that time to testify to a business record.

25 **BY THE COURT:** Let me see it.

26 BY MR. HORAN: It's a regularly kept business
27 record. It doesn't matter whether or not he was
28 present at that time as to whether or not he can
29 identify that particular document as being kept in

1 that store and whether it is regularly kept.

2 BY MR. LUMUMBA: He has got to be able to say
3 that he was the custodian of the records or
4 something of that nature.

5 BY THE COURT: What is this going to rebut?

6 BY MR. HORAN: It's going to rebut that
7 Clemmie Fleming was given some consideration to
8 lie, that they collected on her account.

9 BY THE COURT: Yeah, but she has testified
10 that it was not paid off and she still owed it.

11 BY MR. HORAN: But she said also, Your Honor,
12 they said, but the other witnesses testified that
13 that was a consideration that she was getting. I
14 want to verify that with this document. Her saying
15 something--

16 BY THE COURT: --You have got to rebut what
17 she said. The others can't. No. She said that
18 she still owed it. That's what her testimony was.

19 BY MR. HORAN: She said that she still owed
20 the account, but they testified that she was
21 getting special consideration on it. The deal is
22 they have filed to collect from her through legal
23 action since her testimony at the prior, at the
24 last hearing. It is certainly relevant, Your
25 Honor. It going to be real short. I'm not
26 dragging this out. They are dragging it out.

27 BY THE COURT: Okay. Not hardly. I'm going
28 to allow him to testify to that to show that point.

29 (Mr. Lumumba and Mr. Horan talked at the same

1 time. Both were inaudible.)

2 BY MR. FREELON: That's the reason, Your
3 Honor, she has testified the reason that she did
4 not, that she was upset because they didn't pay
5 it. I mean someone has testified she was upset
6 because they didn't pay it. That is not something
7 new, that is different.

8 BY MR. HORAN: The fact that she didn't?

9 BY MR. FREELON: The other witness testified
10 that she told them that she was upset because they
11 never paid it off, that Tardy Furniture never paid
12 it. Tardy Furniture never allowed the bill to be
13 paid off. That's all they testified to.

14 BY THE COURT: I'm going to allow it for what
15 it is worth.

16 END BENCH CONFERENCE

17 BY MR. HORAN:

18 Q. Can you identify that particular document?

19 A. Yes, sir. I can.

20 Q. Mr. Ballard, what is that document?

21 A. This is the front page of a contract that we have
22 with Clemmie Fleming.

23 Q. And is that basically her account history there?

24 A. Yes, sir. It is.

25 Q. Does that document show whether or not Ms. Fleming
26 since before the murders--

27 BY MR. LUMUMBA: --Judge, he still hasn't
28 authenticated that this gentleman is in a position
29 to authenticate that document.

1 **BY THE COURT:** Sustained.

2 BY MR. HORAN:

3 Q. Are you the general manager of the store at Tardy
4 Furniture?

5 A. Yes, sir. I am.

6 Q. Are you familiar with that particular document?

7 A. Yes, sir. I am.

8 Q. Is that a document that y'all keep in y'all's
9 business on a regular basis with respect to accounts?

10 A. Yes, sir. It is.

11 Q. The entries on that particular document, can you
12 identify those entries?

13 A. Yes, sir. I can.

14 BY MR. HORAN: At this time I have qualified
15 him I think, Your Honor.

16 Q. Okay, Mr. Ballard, as far as that particular
17 document, does it have entries on Ms. Fleming's account
18 before July the 16th all the way up until, up until what
19 time? When is the last time there has been some account
20 history on that?

21 A. The last account entry on this page was 2-9 of '98.

22 Q. That was after September or October of '97?

23 A. Yes, sir.

24 Q. Has her account been treated any differently than
25 any other account in that store?

26 A. No, sir.

27 Q. I want to direct your attention now, Mr. Ballard,
28 to I believe the date of somewhere around July the 3rd, I
29 believe of 1996. Did you have an occasion to be summonsed to

1 the store on that particular date?

2 A. Yes, sir; I was.

3 BY MR. LUMUMBA: Objection. What day are we
4 talking about?

5 BY THE COURT: July the 3rd.

6 BY MR. LUMUMBA: I object.

7 BY THE COURT: Overruled.

8 BY MR. HORAN:

9 Q. And who summonsed you to the store? I don't want
10 you to go into what this individual told you.

11 A. Carmen Rigby.

12 Q. And for what purpose?

13 BY MR. LUMUMBA: Objection. What the purpose
14 has to be hearsay.

15 BY THE COURT: Sustained.

16 BY MR. HORAN:

17 Q. Okay. Was that in relationship to your
18 responsibilities then that you testified about with regard to
19 employees?

20 A. Yes, sir; it was.

21 Q. And did you actually go to the store?

22 A. Yes, sir. I did.

23 Q. Did you meet anybody when you walked into the
24 store?

25 A. Yes, sir. I did. I met one Curtis Flowers.

26 Q. And did you go into the store at that time?

27 A. Yes, sir. We-- I was coming in the store. He was
28 exiting the store.

29 Q. And did you, did you, in fact, have a conversation

1 with Ms. Rigby?

2 A. Yes, sir. I did.

3 Q. Don't go into the contents of that.

4 A. Okay.

5 Q. Would you describe her demeanor at that time?

6 A. Basically apprehensive and nervous.

7 BY MR. LUMUMBA: My objection continues.

8 BY MR. HORAN: I'm not going into the
9 substance of the conversation.

10 BY THE COURT: Overruled.

11 BY MR. HORAN:

12 Q. What was her demeanor at that time?

13 A. Apprehensive, nervous.

14 Q. She appear to be upset?

15 A. Yes, sir. She was unsettled.

16 Q. Okay, did Curtis Flowers work at the store to your
17 knowledge any more after that day?

18 A. Yes, sir. He did.

19 Q. How many days?

20 A. I believe about three more or two and a half days.
21 Two and a half days.

22 Q. Two and a half days after you came in there?

23 A. Yes, sir. A Monday, a Tuesday, and probably a half
24 a day Wednesday.

25 Q. Are you familiar with the incident regarding the
26 batteries, Mr. Ballard?

27 A. Yes, sir; I am.

28 Q. How did--

29 BY MR. LUMUMBA: --Excuse me. Objection.

1 This is total hearsay. This man has no--

2 BY MR. HORAN: --I am fixing to establish how
3 he knew about the batteries, Your Honor.

4 BY THE COURT: Okay. Well, let's see where
5 you go.

6 BY MR. HORAN:

7 Q. Mr. Ballard--

8 BY MR. HORAN: Do you want to approach?

9 BY MR. LUMUMBA: Yeah. I would just like a
10 show of proof.

11 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
12 THE JURY AS FOLLOWS:)

13 BY MR. HORAN: He is going to testify that
14 that was his golf cart that they were working on,
15 his golf cart. I am just going to establish the
16 value of the batteries. That is basically it.

17 BY THE COURT: That is not rebuttal.
18 Sustained.

19 BY MR. HORAN: Okay, that is fine.

20 END BENCH CONFERENCE.

21 BY MR. HORAN: No further questions.

22 CROSS-EXAMINATION BY MR. LUMUMBA:

23 Q. I just have a couple of questions, Mr. Ballard.
24 Good morning.

25 A. Good morning.

26 Q. How are you doing?

27 A. Fine.

28 Q. Good. Mr. Ballard, as far as your-- so as of
29 2-9-98, Ms. Clemmie, I'm sorry, Fleming still owed money on

1 her furniture. Is that correct?

2 A. That's correct.

3 Q. And her furniture has never been seized; is that
4 true?

5 A. Seized?

6 Q. I mean repossessed I guess is the right word.

7 A. Not by Tardy Furniture; that's correct.

8 Q. So you never repossessed her furniture at all, did
9 you? Tardy Furniture never did?

10 A. No, sir.

11 Q. Okay, so to the extent that you know, she still has
12 the furniture. Isn't that true? As far as you know?

13 A. As far as I know.

14 Q. And she-- can I see the document you have, please?

15 A. (Witness hands Exhibit S-110 for identification to
16 Mr. Lumumba.)

17 Q. Thank you.

18 A. (Document handed back to witness.)

19 Q. And I think you said the last action as far as
20 payment on that account was on 2-9-98? Is that--

21 A. No, sir. That is not what I said.

22 Q. Okay. What is the relevance of that date? 2-9-98?

23 A. Each time we have any correspondence with a client
24 or customer pertaining to their contract, it is recorded on
25 their contract.

26 Q. I see. Well, I guess-- hold on one second.

27 (Pause while Defense Counsel confer.)

28 BY MR. LUMUMBA: I have no further questions
29 of this witness.

1 **BY THE COURT:** Is he finally excused?

2 BY MR. HORAN: He is.

3 **BY THE COURT:** Mr. Ballard, you are free to
4 go.

5 WITNESS EXCUSED.

6 **BY THE COURT:** Who do you have next?

7 BY MR. EVANS: Patricia Hollman.

8 **PATRICIA HOLLMAN,**

9 a black female recalled to testify, this time as a witness by
10 the State in REBUTTAL, having been previously sworn,
11 testified again as follows, to-wit:

12 BY MR. EVANS: May I proceed, Your Honor?

13 **BY THE COURT:** All right.

14 DIRECT EXAMINATION BY MR. EVANS:

15 Q. Good morning, Ms. Hollman.

16 A. Good morning.

17 Q. You are the same Patricia Hollman that has
18 testified in this hearing before; is that correct?

19 A. Correct.

20 Q. Ms. Hollman, you have a brother by the name of
21 Odell Hollman, Jr.?

22 A. Yes, I do.

23 Q. I'm going to try to make this short and to the
24 point. Have you ever agreed with your brother to make up any
25 lie to try to get money out of the reward from the Tardy
26 Furniture murders?

27 A. No, I have not.

28 Q. Is everything you told this jury about what you
29 know about this Defendant the truth?

1 A. Yes, it is.

2 Q. Do you know of any reason that your brother would
3 come into court and make up a story like that?

4 BY MR. LUMUMBA: Well--

5 A. --Yes, I do.

6 BY MR. LUMUMBA: Excuse me, Judge.

7 BY MR. EVANS: Wait until the Court rules.

8 BY MR. LUMUMBA: I think that calls for her to
9 read his mind. I mean let's-- can we approach,
10 please, for an offer of proof? It sounds like
11 speculation and hearsay.

12 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
13 THE JURY AS FOLLOWS:)

14 BY MR. LUMUMBA: I mean we are showing an
15 offer of proof. She said that she knows there is a
16 reason. How can she know why her brother would
17 make something?

18 BY THE COURT: Well, he might have told her.

19 BY MR. LUMUMBA: Well, he wasn't-- no
20 predicate was laid. He didn't ask the brother if
21 he told her anything.

22 BY MR. EVANS: I asked a simple question, do
23 you know.

24 BY THE COURT: Yeah, the predicate has been
25 laid for sure.

26 BY MR. LUMUMBA: Judge, what I'm saying again
27 is let's not get hearsay out and then find out it
28 is hearsay and have the damage done. What I'm
29 asking is that if she knows and--

1 **BY THE COURT:** --Well, ask her if she knows of
2 her own personal knowledge.

3 **BY MR. LUMUMBA:** I am asking that a foundation
4 be laid. How does she know? Did she see it, or is
5 it something she heard? If it's something she
6 heard-- excuse me. If it's something she heard,
7 even if it's from her brother, it's not admissible
8 if he hasn't laid a predicate. He hasn't laid a
9 predicate on that at all.

10 **BY MR. EVANS:** If it is something that she has
11 heard from her brother, that would be a reason for
12 her to know. It is not offered as hearsay. It is
13 offered for the basic reason that I asked if she
14 had an opinion why he would come in here and lie.

15 **BY MR. LUMUMBA:** Judge, her opinion is not
16 relevant.

17 **BY THE COURT:** Her opinion unless he, unless
18 she-- I mean I'm not going to let her make a lay
19 opinion as to why he lied.

20 **BY MR. EVANS:** It is based on her knowledge,
21 her conversations with him and her knowledge of
22 him, what they had problems over.

23 **BY MR. LUMUMBA:** Then how do we know what the
24 foundation is?

25 **BY MR. EVANS:** No, you don't get her--

26 **BY MR. LUMUMBA:** --Her conversations with him
27 and her conversations with him, anything he said is
28 not admissible unless he lays the proper
29 predicate. Now he knew--

1 BY THE COURT: --I'm going to sustain the
2 objection.

3 BY MR. EVANS: I assume, Your Honor, that if
4 he asks her questions and opens the door, that I
5 will be allowed to go into it?

6 BY THE COURT: Sure. That changes the field
7 of play.

8 BY MR. EVANS: No further questions.

9 CROSS-EXAMINATION BY MR. LUMUMBA:

10 Q. Good morning, Ms. Hollman.

11 A. Morning.

12 Q. Now Ms. Hollman, you told Counsel that you had not
13 misrepresented the truth because of any kind of
14 conversation. Is that true? And I mean because of any kind
15 of relationship with your brother or any other reason; you
16 have not misrepresented the truth as far as this case is
17 concerned. Is that true?

18 A. That's true.

19 Q. Okay. In fact, Ms. Hollman, didn't you
20 misrepresent the truth as the relationship to the age of your
21 children in order to try to convince, in order to try to be--

22 BY MR. EVANS: --Your Honor, may we approach?
23 I didn't go into anything about her testimony about
24 the age of her children. I went into her testimony
25 about what she knew about this Defendant, and that
26 is as far as I went.

27 BY MR. LUMUMBA: We went into the question of
28 lying, Judge, and that's what I am getting into,
29 and it was lying in relationship to shoes. I will

1 get right to-- it is clearly relevant to the issues
2 at hand.

3 **BY THE COURT:** Okay, I will allow you. Go
4 ahead.

5 BY MR. LUMUMBA:

6 Q. I think that you indicated at a previous hearing
7 that you had purchased shoes for your two boys; is that
8 correct?

9 A. That's correct.

10 Q. And you indicated at that hearing that your boys
11 were at an older age than they actually were in order to
12 justify that representation, didn't you? Didn't you say at
13 that previous hearing that your boys were older than they
14 really were?

15 A. No, I did not.

16 Q. Okay, you have a son by the name of Trevaris; is
17 that correct?

18 A. That's correct.

19 Q. And he is your oldest son; isn't that correct?

20 A. That's correct.

21 Q. And he will only be twelve years old this year;
22 right?

23 A. Yes, he will.

24 Q. Yet, back in 1997, in order to-- about in 1997 you
25 told, you testified at a hearing under oath on October the
26 13th, 1997, that he was eleven years old at that time, didn't
27 you?

28 A. That doesn't matter. I at the time--

29 Q. --Excuse me. Let me see. "Okay, Ms. Hollman, tell

1 me how you are familiar with the fact that Mr. Flowers had
2 Fila Grant Hill tennis shoes that morning." A. "Because I
3 have two boys, ages 11 and 9, and I bought them a pair. They
4 wear Filas. They wear Grant Hill tennis shoes."

5 A. That's correct.

6 Q. Okay, and you said one of them was eleven, and one
7 of them was nine; right? Isn't that what you said back then
8 two years ago?

9 A. What has that got to do with it?

10 Q. I'm asking you a question.

11 A. Yes, I did but that doesn't-- at the time.

12 Q. You knew the ages of your children back then,
13 didn't you?

14 A. Yes, I do.

15 Q. Okay, so the young man is eleven now, but you
16 testified two years ago that he was eleven at that time, and
17 you had bought the child of that age a pair of Grant Hill
18 tennis shoes?

19 A. They said that-- it don't matter what age they at;
20 they wear Filas.

21 Q. I see.

22 A. And Nikes, and my little girl is six now. She have
23 on some now.

24 Q. I see. But that was your testimony at the time,
25 that he was eleven years old; is that correct? Is that
26 right?

27 A. Yes, that's right.

28 Q. Okay. But the truth of the matter is he will only
29 be twelve this year; is that correct?

1 A. Yes.

2 Q. Well, was that a lie that he was eleven years old
3 two years ago?

4 A. No, it just was a misunderstanding. It wasn't a
5 lie.

6 Q. You had a misunderstanding about how old your child
7 is? You thought he was two years older than he really was?

8 A. No, I didn't.

9 BY MR. LUMUMBA: I have no further questions.

10 REDIRECT EXAMINATION BY MR. EVANS:

11 Q. Ms. Hollman, in that prior transcript that he is
12 talking about, you said then that Curtis Flowers wore Fila
13 Grant Hill tennis shoes?

14 A. Yes, I did.

15 Q. And you said the way that you knew it is because
16 your children had some and you knew what they looked like--

17 A. --that's right--

18 BY MR. LUMUMBA: --Excuse me, Judge. The
19 questions are leading. I don't have--

20 BY THE COURT: Sustained.

21 BY MR. EVANS: Nothing further.

22 BY THE COURT: Is she finally excused?

23 BY MR. EVANS: Yes, sir.

24 BY THE COURT: Ms. Hollman, you are free to
25 go.

26 WITNESS EXCUSED.

27 BY THE COURT: Who will you have next?

28 BY MR. EVANS: Clemmie Fleming.

29 BY THE COURT: Clemmie Fleming.

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CLEMMIE FLEMING,

a black female called to testify as a witness by the State in
REBUTTAL, having been previously sworn and previously
testified, testified again as follows, to-wit:

BY MR. EVANS: May I proceed, Your Honor?

DIRECT EXAMINATION BY MR. EVANS:

Q. Good morning, Ms. Fleming.

A. Good morning.

Q. You are the same Clemmie Fleming that has testified
in this trial previously; is that correct?

A. Yes, sir.

Q. Ms. Fleming, is what you told this jury earlier the
truth?

A. Yes, sir.

Q. Did you ever at any time--

BY MR. LUMUMBA: --Judge.

BY MR. EVANS: One moment.

BY MR. LUMUMBA: My objection is to proper
rebuttal. If there is something specific that came
from our case that he is going to ask her to rebut,
I have no problems. But just to ask her things
that she has already testified to-- can we
approach? And I'm not going to do this again. I'm
just going to do it for all witnesses.

(CONFERENCE AT THE BENCH OUT OF THE HEARING OF
THE JURY AS FOLLOWS:)

BY MR. LUMUMBA: Here is my problem. This is
improper rebuttal, did you tell the truth the first
time. I don't think that is proper. She has

already said what she said the first time. If he is going to ask a specific question, to ask her about what somebody else said she said, that is proper rebuttal. But you can't just keep bringing witnesses up to rehash and confirm what they said.

BY THE COURT: I think that is right. Just to call them back up there just to say that she is telling the truth again is not proper rebuttal. If you have got some specifics--

BY MR. EVANS: --I do, Your Honor.

BY THE COURT: Well, you can go into them, but just don't ask those questions again.

BY MR. EVANS: And also, the purpose of that question is because he attempted to attack her on this line. I think it is definitely proper rebuttal just to get her to say that she was not lying--

BY THE COURT: --I don't.

BY MR. EVANS: But that's as far as I am going on that line.

BY THE COURT: Okay.

END BENCH CONFERENCE

BY MR. EVANS:

Q. Ms. Fleming, as I was starting to say, let me start back over. Did you ever on any occasion try to get Roy Harris to lie and say that you were with him when you were not with him?

A. No, sir.

Q. If Roy Harris said that you were not with him when

1 he saw the person running that you identified as Curtis
2 Flowers, would that be true or not true?

3 A. Not true.

4 Q. Which direction-- if Roy Harris said that-- well,
5 which point. If Roy Harris ever in any statement said that
6 you did not go in front of Tardy Furniture and turn right and
7 go down Church Street, would that be untrue?

8 A. Yes, sir.

9 BY MR. EVANS: One moment, Your Honor.

10 (State's Counsel confer briefly.)

11 Q. Did you ever tell anyone that you made this story
12 up in an attempt to get reward money?

13 A. No, sir.

14 Q. Are you doing that?

15 A. No, sir.

16 Q. Have you ever asked for any reward money?

17 A. No, sir.

18 BY MR. EVANS: That's all we have, Your Honor.

19 CROSS-EXAMINATION BY MR. LUMUMBA:

20 Q. Good morning, Ms. Fleming.

21 A. Good morning.

22 Q. Ms. Fleming, would it be safe to say that Mary
23 Fleming is your sister?

24 A. Yes, sir.

25 Q. Would it be safe to say that Latarsha Blissett is
26 your--

27 A. Cousin.

28 Q. Is your cousin?

29 A. Yes, sir.

1 Q. And your friend?

2 A. Yes, sir.

3 Q. Okay. Now and it would be safe to say that Stacey
4 Wright is related to you too; is that correct?

5 A. Yes, sir.

6 Q. On one occasion you actually told Ms. Blissett, did
7 you not, that you never saw Mr. Curtis Flowers anywhere--

8 A. No.

9 Q. --near the Tardy Store, but you saw him way away
10 from that store. Did you say that?

11 A. No, sir.

12 Q. You never said that you saw him way away from the
13 Tardy store?

14 A. No, sir.

15 Q. So your voice would not be on tape saying that?

16 A. No, sir.

17 (Pause while Mr. Lumumba gets out a tape.)

18 BY MR. EVANS: Your Honor, may we approach?

19 BY THE COURT: Uh-hum.

20 BY MR. HORAN: Your Honor, if he can
21 authenticate the tape, he can play it, but if he
22 can't authenticate it with Ms. Blissett, he can't
23 play it.

24 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
25 THE JURY AS FOLLOWS:)

26 BY MR. EVANS: At this point I have two
27 specific things I want to raise. This is improper
28 at this time, and I would ask for sanctions on
29 anything that has not been furnished to us at this

1 point.

2 BY MR. LUMUMBA: I sent them everything I had
3 or either told them in a letter that he could come
4 get it. This--and they were free to listen to what
5 they got. Now this is not a tape which I have a
6 transcript of. I told them that we had tapes, and
7 I told them they could get them, which is the same
8 thing he told us. Now the day that you told us to
9 exchange tapes we gave them everything we had.

10 BY MR. EVANS: You didn't give us this.

11 BY MR. LUMUMBA: This was created after that.
12 We didn't have this at that time. But the thing is
13 and they have created tapes after that. They have
14 got a tape of - who was it? - Hawkins, and they
15 sent it to us saying that we-- well, they sent us a
16 transcript, but we don't have a transcript of
17 this. We never had a transcript of this, and I am
18 not certain that they haven't gotten this tape.
19 They should have gotten this tape.

20 BY THE COURT: The trouble is it has not been
21 authenticated with Ms. Blissett when she testified.

22 BY MR. LUMUMBA: Oh, no; it's not Ms.
23 Blissett. Clemmie Fleming is going to
24 authenticate. Her voice is on it.

25 BY THE COURT: I'm not going to allow it. As
26 far as I know, it wasn't furnished. I don't have
27 any evidence--

28 BY MR. LUMUMBA: --It was furnished. And my
29 representation is it was furnished in discovery.

1 This tape was furnished in discovery, so there is
2 no reason why it shouldn't be allowed.

3 **BY THE COURT:** I'm not going to allow it, so
4 the objection is sustained.

5 (Counsel started to leave the bench, but Mr.
6 Evans requested to come back again.)

7 **BY MR. EVANS:** I don't think so. That is
8 okay.

9 END BENCH CONFERENCE

10 **BY MR. LUMUMBA:**

11 Q. In any event, if you heard your voice on tape--

12 A. --I would know my voice; yes, sir.

13 Q. --you would recognize? Okay. And you certainly
14 recall talking to Blissett about this matter on the phone,
15 don't you?

16 A. Yes, sir.

17 (Defense Counsel confer briefly.)

18 **BY MR. LUMUMBA:** I have no further questions.

19 **REDIRECT EXAMINATION BY MR. EVANS:**

20 Q. Ms. Fleming, you were asked about Latarsha
21 Blissett's relationship to you?

22 A. Yes, sir.

23 Q. What is Latarsha Blissett's relationship to the
24 Defendant?

25 A. She goes with one of his cousins.

26 Q. Which one of his cousins does she go with?

27 A. Earl Campbell.

28 Q. So if she testified she didn't have any connection
29 with his family, that wouldn't be true, would it?

1 BY MR. LUMUMBA: She didn't testify to that,
2 Judge. Objection.

3 BY THE COURT: Sustained as to leading.

4 BY MR. LUMUMBA: She specifically said that
5 she was a girlfriend.

6 BY MR. EVANS:

7 Q. Who, if anyone, asked you to lie in relationship to
8 this case?

9 A. Mary Fleming.

10 BY MR. LUMUMBA: Objection.

11 BY MR. EVANS: Wait just a minute.

12 BY THE COURT: I didn't hear the answer.

13 BY MR. EVANS: She said Mary Fleming.

14 BY MR. LUMUMBA: There is no predicate laid
15 for that.

16 BY MR. EVANS: Yes, sir. We asked Mary
17 Fleming about that, Your Honor. Plus--

18 BY THE COURT: This is redirect. Sustained.

19 BY MR. EVANS: Nothing further, Your Honor.

20 BY THE COURT: Is she finally excused?

21 BY MR. LUMUMBA: I would ask that the last
22 answer be stricken since I had no ability to
23 cross-examine.

24 BY THE COURT: Okay, that last answer will be
25 stricken. The jury is instructed to disregard it.
26 You are free to go, Ms. Fleming.

27 WITNESS EXCUSED.

28 BY MR. EVANS: Your Honor, at this point the
29 State of Mississippi finally rests.

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STATE RESTS ON REBUTTAL.

BY THE COURT: All right. Ladies and gentlemen, you have now heard all the testimony in this case. We do have the instructions ready for me to give you, and then the argument will proceed. The argument will be fairly lengthy in this case and will probably take us on over into the lunch break. So I'm give to give y'all about 15 minutes right now, and at that time I'm going to let you go ahead and order your lunch. We will bring it in, and it will be waiting on you when you go to do your deliberations, and you can also do whatever else you want to do on your break within the confines of what I let you do. Okay.

JURY LEAVES THE COURTROOM.

BY MR. LUMUMBA: Judge, I do want to put in the record. I am going to, we are going to find the spot on the tape that we are talking about because I definitely want to be on the record, and I also will find the letter which transfers this on discovery. They got this Blissett material on discovery. They got this tape, and there is no reason why it should not have been allowed. So that's my-- I wanted to make a record of that. We will find the exact spot so you don't have to rummage through the whole tape, but we will find it.

BY MR. EVANS: If we are going to get into any of it, I would like a copy of the tape so we can

1 listen to it even though it is too late to use it
2 in trial.

3 BY MR. LUMUMBA: Well, you have already had a
4 copy of this tape. If you want another copy, I
5 don't have a problem with that although I can't
6 just reproduce it right here. I don't have
7 anything to reproduce it with.

8 BY MR. EVANS: I would like to listen to it
9 before we leave here.

10 BY MR. LUMUMBA: I don't have any problem.

11 BY THE COURT: I'm not going to get into
12 that.

13 (FOLLOWING A BRIEF RECESS, THE COURT, THE
14 ATTORNEYS AND THE DEFENDANT RETURNED TO THE
15 COURTROOM WITH THE JURY OUT FOR THE FOLLOWING:)

16 BY MR. LUMUMBA: Judge, we have got a tape
17 here. One second.

18 (THE DEFENSE ATTORNEYS LEFT THE COURTROOM.
19 UPON MR. LUMUMBA RETURNING INTO THE COURTROOM AT
20 11:02 A.M. PROCEEDINGS CONTINUED:)

21 BY THE COURT: Okay, are we ready to proceed?

22 BY MR. LUMUMBA: Yes, we are ready to proceed.

23 BY THE COURT: Okay, bring the jury in.

24 JURY ENTERS THE COURTROOM.

25 BY THE COURT: Ladies and gentlemen, at the
26 beginning of this case, I told you at the end of
27 the case that I would give you the instructions on
28 the law, and these are the instructions that I have
29 for you. You will be allowed to take these to the

1 jury room with you during your deliberations for
2 your consideration.

3 "You have heard all of the testimony and
4 received the evidence and will hear the arguments
5 of counsel shortly. I will now instruct you as to
6 the rules of law which you will apply to this
7 evidence in reaching your verdict.

8 When you took your place in the jury box, you
9 took an oath that you would follow and apply these
10 rules to the evidence in reaching your verdict in
11 this case. It is, therefore, your duty as jurors
12 to follow the law which I shall now state to you.

13 You are not to be concerned with the wisdom of
14 any rule of law. Regardless of any opinion you may
15 have as to what the law ought to be, it would be a
16 violation of your sworn duty to base your verdict
17 upon any other view of law than that given in these
18 instructions.

19 You are not to single out one instruction
20 alone as stating the law, but you must consider
21 these instructions as a whole.

22 It is your exclusive province to determine the
23 facts in this case and to consider and weigh the
24 evidence for that purpose. The authority thus
25 vested in you is not an arbitrary power, but must
26 be exercised with sincere judgment, sound
27 discretion, and in accordance with the rules of
28 law.

29 Both parties have a right to expect that you

1 will conscientiously consider and weigh the
2 evidence and apply the law of the case.

3 It is your duty to determine the facts and to
4 determine them from the evidence produced in open
5 court. You are to apply the law to the facts and
6 in this way decide the case. You should not be
7 influenced by bias, sympathy or prejudice based on
8 race, religion, color or any such manner. Your
9 verdict should be based on the evidence and not
10 upon speculation, guesswork, or conjecture.

11 You are required and expected to use your good
12 common sense and sound honest judgment in
13 considering and weighing the testimony of each
14 witness who has testified in this case.

15 The evidence which you are to consider
16 consists of the testimony and statements of the
17 witnesses and exhibits offered and received. You
18 are also permitted to draw such reasonable
19 inferences from the evidence as seem justified in
20 light of your own experience.

21 Arguments, statements and remarks of counsel
22 are intended to help you understand the evidence
23 and apply the law, but are not evidence. If any
24 argument, statement or remark has no basis in the
25 evidence, then you should disregard that argument,
26 statement or remark.

27 The production of evidence in court is
28 governed by rules of law. From time to time during
29 the trial it has been my duty as judge to rule on

1 the admissibility of evidence. You must not
2 concern yourselves with the reasons for my rulings
3 since they are controlled and governed by the rules
4 of law. You should not infer from my rulings on
5 these motions or objections to the evidence that I
6 have any opinion on the merits favoring one side or
7 the other. You should not speculate as to possible
8 answers to questions which I did not require to be
9 answered. Further, you should not draw any
10 inferences from the content of these questions.

11 You are to disregard all evidence which I
12 excluded from consideration during the course of
13 the trial.

14 If in stating the law to you, I repeat any
15 rule, direction or idea; or if I state the same in
16 varying ways, no emphasis is intended, and you must
17 not draw any inference therefrom. The order in
18 which these instructions are given has no
19 significance as to their relative importance.

20 The law presumes every person charged with the
21 commission of a crime to be innocent. This
22 presumption places upon the State the burden of
23 proving the defendant guilty of every material
24 element of the crime with which the defendant is
25 charged. Before you can return a verdict of
26 guilty, the State must prove to your satisfaction
27 beyond a reasonable doubt that the defendant is
28 guilty. The presumption of innocence attends the
29 defendant throughout the trial and prevails at its

1 close unless overcome by evidence which satisfies
2 the jury of the defendant's guilt beyond a
3 reasonable doubt and to the exclusion of every
4 other reasonable hypothesis consistent with
5 innocence. The defendant is not required to prove
6 his or her innocence.

7 The verdict of the jury must represent the
8 considered judgment of each juror. In order to
9 return a verdict, it will be necessary that each
10 juror agree. In other words, all twelve jurors
11 must agree before returning a verdict in this
12 case. It is your sworn duty as jurors to consult
13 with one another and to deliberate in view of
14 reaching an agreement, if you can do so without
15 violence to your individual judgment. Each of you
16 must decide the case for yourself, but do so only
17 after an impartial consideration of the evidence
18 with your fellow jurors. In the course of your
19 deliberations, do not hesitate to re-examine your
20 own views and change your opinion, if convinced it
21 is erroneous, but do not surrender your honest
22 convictions as to the weight or effect of evidence
23 solely because of the opinion of your fellow jurors
24 or for the purpose of returning a verdict.

25 The burden of proof in this case is on the
26 State to prove the defendant's guilt beyond a
27 reasonable doubt and to the exclusion of every
28 other reasonable hypothesis consistent with
29 innocence. The Defendant is not required to prove

1 anything in this case or to testify in his own
2 behalf. You must not hold the fact that the
3 defendant did not testify in this case against him
4 or as any evidence of guilt.

5 Evidence of a prior criminal activity on the
6 part of one criminally accused is inadmissible
7 where the prior offense has not resulted in a
8 conviction, except, however, that the State has a
9 legitimate interest in telling the rational and
10 coherent story of what happened and where
11 substantially necessary to present to the jury the
12 complete story of the crime, evidence, or testimony
13 may be given even though it may reveal or suggest
14 other crimes.

15 In this case, evidence has been offered by the
16 State that the defendant may have committed crimes,
17 other than the capital murder of Derrick Stewart.
18 The defendant is on trial for the offense of the
19 capital murder of Derrick Stewart and that offense
20 only. You cannot convict the defendant in this
21 case unless the State has proven beyond a
22 reasonable doubt and to the exclusion of every
23 reasonable hypothesis consistent with innocence
24 each and every element of capital murder as set out
25 in Instruction Number, Instruction Number 7.

26 'Alibi' means elsewhere or in another place.
27 Alibi is a legal and proper defense in law. The
28 Defendant is not required to establish the truth of
29 his alibi to your satisfaction, but if the" lack

1 "but if the evidence or lack of evidence in this
2 case raises in the minds of the jury a reasonable
3 doubt as to whether the Defendant was present and
4 committed the crime, then you must give him the
5 benefit of the doubt and acquit him.

6 If you believe from all the evidence in this
7 case, beyond a reasonable doubt and to the
8 exclusion of every other reasonable hypothesis
9 consistent with innocence, that the defendant,
10 Curtis Giovanni Flowers, by his own act or by
11 acting in concert with another or others, did on or
12 about July the 16th, 1996, in Montgomery County,
13 Mississippi, willfully, unlawfully, feloniously,
14 either with or without deliberate design, then and
15 there kill and murder Derrick Stewart, a human
16 being, without authority of law, when engaged in
17 the commission of the crime of armed robbery, then,
18 if you so believe from all the evidence in this
19 case beyond a reasonable doubt and to the exclusion
20 of every other reasonable hypothesis consistent
21 with innocence, that the defendant is guilty of
22 capital murder, then it is your sworn duty to say
23 so by your verdict.

24 If the State has failed to prove any one or
25 more of these elements beyond a reasonable doubt
26 and to the exclusion of every other reasonable
27 hypothesis consistent with innocence, beyond a
28 reasonable doubt and to the exclusion of every
29 other reasonable hypothesis consistent with

1 innocence, then you shall find the defendant not
2 guilty of capital murder.

3 If you believe from all the evidence in this
4 case beyond a reasonable doubt and to the exclusion
5 of every other reasonable hypothesis consistent
6 with innocence that the defendant, Curtis Giovanni
7 Flowers, by his own act or by acting in concert
8 with another or others in Montgomery County,
9 Mississippi, on or about July the 16th, 1996,
10 willfully, unlawfully, and feloniously, with the
11 felonious intent to permanently deprive the owner
12 thereof, did take, steal, and carry away or attempt
13 to take, steal and carry away the personal property
14 of Bertha Tardy, from the presence and against the
15 will of Bertha Tardy, by violence to her person
16 with a deadly weapon, then the same would
17 constitute armed robbery.

18 A thing is in the presence of a person, in
19 respect to robbery, which is so within his reach,
20 inspection, observation, or control that he could,
21 if not overcome with violence or prevented by fear,
22 retain his possession of it.

23 The Court instructs the jury that
24 identification testimony is an expression of belief
25 or impression by the witness. You must judge its
26 value and reliability from the totality of the
27 circumstances surrounding the crime and the
28 subsequent identification. In appraising the
29 identification testimony of a witness, you should

1 consider the following: Did the witness have an
2 adequate opportunity to observe the offender? Did
3 the witness observe the offender with an adequate
4 degree of attention? Did the witness provide an
5 accurate description of the offender after the
6 crime? How certain is the witness of the
7 identification? How much time" is passed, "how
8 much time passed between the crime and the
9 identification?

10 Upon retiring to the jury room, you will
11 select one from among your number to act as
12 foreperson. The foreperson will preside over your
13 deliberations and will be your spokesman before the
14 court in the event there is any matter about which
15 you wish to communicate with the court. If it
16 becomes necessary during your deliberations to
17 communicate with the court, you may send a note by
18 the bailiff, signed by your foreperson, or one or
19 more members of the jury. No member of the jury
20 should ever attempt to communicate with the court
21 by any means other than a signed writing, and the
22 court will never communicate with any member of
23 the jury on a subject touching the merits of this
24 case otherwise than in writing or orally in open
25 court.

26 The Court instructs the jury that if there may
27 be a fact or circumstance in this cause susceptible
28 of two interpretations, one favorable and the other
29 unfavorable to Curtis Flowers, when the jury has

1 considered such fact or circumstance with all other
2 evidence, there is a reasonable doubt as to the
3 correct interpretation, then you, the jury, must
4 resolve such doubt in favor of Curtis Flowers, and
5 place upon such fact or circumstance the
6 interpretation most favorable to Curtis Flowers.

7 This phase of the trial deals only with the
8 question of the guilt or innocence of the
9 Defendant, Curtis Giovanni Flowers. In the event
10 that you find the Defendant guilty of Capital
11 Murder, you will then and only then consider the
12 appropriate sentence to be imposed.

13 Your verdict must be plainly marked on the
14 separate form provided by the Court. It need not
15 be signed by you, and may be in either of the
16 following forms:

17 If you find the Defendant, Curtis Giovanni
18 Flowers, guilty of Capital Murder, then the form of
19 your verdict shall be: 'We, the jury, find the
20 defendant guilty of Capital Murder.'

21 If you find the Defendant, Curtis Giovanni
22 Flowers, not guilty, the form of your verdict shall
23 be: 'We, the jury, find the Defendant not
24 guilty.'"

25 When you have reached a verdict, there is a
26 form that is attached to these instructions that
27 has both those verdicts on it, and all you have to
28 do is check the one that applies to what your
29 decision is. Let the argument proceed.

1 BY MR. HORAN: May I proceed, Your Honor?

2 BY THE COURT: Uh-hum.

3 FINAL ARGUMENT BY MR. HORAN:

4 I have got a little over 30 minutes, and I hope I
5 make it. I don't know if I will or not. I want to talk to
6 you first of all about some of the things you heard last here
7 today because I think that is important. They teach us when
8 we go to these seminars on how to prosecute cases. They tell
9 us to talk about things that the jury hears last and talk
10 about the things they hear first.

11 And I want y'all to bear in mind that when I stand
12 up here through the course of seven days with Mr. Evans and
13 Counsel for the Defendant, we stand up here and we say
14 something is evidence. That is not evidence. When they say
15 something is on a tape, that is not necessarily what it is.
16 Things like that are trial tactics, and I run into them all
17 the time--

18 BY MR. LUMUMBA: --Judge, I object to that.

19 BY MR. HORAN: Your Honor, this is closing
20 argument.

21 BY MR. LUMUMBA: That doesn't make any
22 difference. He is trying to imply something is not
23 on that tape which is on that tape.

24 BY MR. HORAN: I am saying it is not
25 evidence--

26 BY MR. LUMUMBA: --according to the ruling--

27 BY MR. HORAN: --What he says is not evidence--

28 BY MR. LUMUMBA: --That's what he can say. The
29 Court has ruled that it was not admissible, and

1 that's all he can say about it. He can't--

2 **BY THE COURT:** --That is true, Mr. Horan.

3 BY MR. LUMUMBA: --say something which is
4 absolutely not true.

5 BY MR. HORAN:

6 What he says is not evidence. What I say during
7 the course of this trial is not evidence. What I say a
8 witness says is not evidence. And regardless of how many
9 times that I say that witness says that, said that, that is
10 not evidence. I want y'all to remember that.

11 Now in July the 16th, 1996, something happened in
12 Winona, Mississippi, that is going to change that town
13 forever. I think y'all can see that. Y'all have seen that.
14 You have seen sisters get pitted against sisters, and you
15 have seen brothers come in here and testify - I'm talking
16 about Odell Hollman, if you want to give him any
17 consideration whatsoever - brothers testify against sisters.
18 And all this stuff about a reward and all that kind of stuff,
19 I think y'all can see why a number of these witnesses would
20 be reluctant to come forward in the first place. You saw
21 what happened to them as a result of their cooperation. You
22 saw that some people came down on them because eventually
23 they did come forward.

24 Now no one has testified, nobody has testified that
25 any of these people came to any law enforcement officers out
26 of the blue knocking on the door saying I need to tell you
27 something about what happened on the 16th. There is no proof
28 of that. John Johnson, Wayne Miller and Jack Matthews during
29 the course of their job interviewed a number of people. They

1 came across certain witnesses that had information about this
2 Defendant. All this information contradicted what he told
3 them initially.

4 Now on that day Sam Jones told you that he got a
5 call. He did not say he arrived at 9:30. He said he got a
6 call from Ms. Tardy at 9:30, and he is estimating exactly--
7 and he is an elderly gentleman. No one at that particular
8 time needed to be checking their watch or anything like that.

9 He testified--

10 BY MR. LUMUMBA: --Judge, I realize that is
11 argument, but I do object. Mr. Jones said he got a
12 call at 9 o'clock, and he arrived at 9:30. That
13 was his testimony--

14 BY MR. HORAN: --He did not.

15 BY THE COURT: The jury has heard the
16 evidence. This is argument.

17 BY MR. HORAN:

18 He said he received a call around 9:30. I recall;
19 I wrote it down. It took him 15 to 20 minutes to get there,
20 and he is guessing, ladies and gentlemen. I think we would
21 all agree with that. He arrived at the store, and he goes in
22 and he sees the carnage of every employee at that time
23 besides Mr. Tom Tardy at Tardy Furniture. He sees Derrick
24 "BoBo" Stewart, this young man right here (NOTE: Counsel
25 holds up photograph of victim from autopsy.) laying in his
26 own blood, gasping for life. He goes up to, up the street,
27 just up the street a short distance to Coast to Coast. He
28 comes back, and we know that at 10:21 Johnny Hargrove
29 arrived. He received a call, and he said it took him a

1 minute or two to get there. We know that. And he went
2 inside. He observed the bloody footprints that has been
3 testified about.

4 Now I want to talk about the footprints for just a
5 minute. There aren't 600,000 people in Winona. There are
6 5500. And didn't 600,000 people have access to Doyle
7 Simpson's gun. So whoever had access to that gun and had the
8 same type tennis shoe that was in that store committed this
9 murder.

10 Let's get back to the scene for a second. Johnny
11 Hargrove, 10:21 he arrives. He goes inside. He calls for
12 back up. Mr. Jones testified that he went right up the
13 street and came back. And I submit to you, ladies and
14 gentlemen, that he probably stayed in that store no more than
15 two or three minutes. I mean a normal human being would not
16 go in there and linger around once he saw that. So he
17 probably, I think it's reasonable to conclude that around
18 ten, around ten, between 10:18 to 20 he left the store going
19 up. (Counsel writes on pad on easel.)

20 Okay, and we know at 9:43 Porky Collins was at
21 Wal-Mart, and he testified that it took him approximately 15
22 or 20 minutes to get to the location of Tardy Furniture after
23 he ran to the house. So approximately around 10 o'clock
24 these murders occurred, approximately, around that time.
25 (Counsel writes on pad again.) He saw these individuals
26 headed toward the store and going inside, this one individual
27 headed, went north, for what that is worth, went north and
28 went across the street, an individual that he identified as
29 Curtis Flowers. Now no one has put on any proof that Porky

1 Collins got offered anything. In fact, he went back to the
2 scene that day and gave them a description of an individual
3 that he saw walking across the street at approximately 10
4 o'clock.

5 So we know just according to what Sam Jones has
6 told us and according to what Johnny Hargrove told us that
7 sometimes in close proximity to 10:18-- from 9:43 to 10:18 or
8 from 5 minutes until 10:00 until 10:18 these murders
9 occurred.

10 Now Clemmie Fleming. I want to talk to you about
11 Clemmie. Clemmie says around 10 o'clock. She is the young
12 lady who was under a barrage of attacks because of her
13 testimony. Approximately 10 o'clock Clemmie Fleming sees the
14 Defendant 92 steps of hers, which I don't think is 75 yards.
15 Mr. Johnson testified to that, but it was probably less than
16 that of her steps. She said 92 of her steps - If that's 75
17 yards, she has got a heck of a step - behind Tardy Furniture
18 Store running away. That's what she testified to. And I
19 submit to you; she gave this statement some time after this
20 crime, but I think you understand why. All these people come
21 in here and attack her after, after she has given sworn
22 testimony before, after September or October of 1997. I
23 think that is important to you, ladies and gentlemen, to
24 understand why this case is so important.

25 Now she sees him 92 steps away, and she is with Roy
26 Harris. Roy Harris is an elderly man, but we did all this
27 screaming and facilitated some of this I have got in my
28 throat now. We did all this screaming at him, and I'm going
29 to point something out to you about that in just a little

1 bit. Did all this screaming, but he testified in the prior
2 hearing. I asked him a question, and he admitted under oath
3 he said this. "Who did she identify on Church Street?"

4 BY MR. LUMUMBA: Which page are you on?

5 BY MR. HORAN: 765.

6 "Who did Clemmie Fleming identify?" "She said it
7 was something, Curtis something; I don't know." "Curtis
8 Flowers?" I don't know. Curtis something.

9 Now you have got this identification instruction,
10 and part of that identification instruction says how much
11 after the crime in question did the individual identify this
12 person. She identified this individual running away from the
13 store at approximately 10 o'clock when she told Roy Harris
14 that. Mr. Harris admitted under oath, admitted today that he
15 had testified to that-- I meant admitted the other day that
16 he had testified to that under oath before, and he also
17 admitted that he testified that they went down Front Street.
18 I understand Mr. Harris has changed his story, but I think
19 y'all understand what that is all about.

20 I asked Mr. Harris, "Did Ms. Fleming identify the
21 man running as Curtis Flowers to you?" "That's what she,
22 that's what I remember her saying." "And this is the day of
23 the murders, that morning on Church Street, two blocks from
24 behind" Tardy Furniture, "behind Tardy's, she identified
25 Curtis Flowers to you, didn't she?" "That's right." Now he
26 testified that Mr. John Johnson-- I didn't quite understand
27 that part-- the investigator from my office made him say that
28 and that this 15 year old girl came to him, an elderly
29 gentleman, and made him testify to back her story up. That

1 is a bunch of junk, and me sitting up there screaming at him
2 - Mr. Lumumba didn't have to scream at him near as loud as I
3 did - was a bunch of junk too because when I came over and
4 sat in my chair and objected, never raised, never got up.
5 Mr. Lumumba was getting into something on redirect that I
6 hadn't gotten into. I sat in that chair, and I said,
7 "Objection, Your Honor. I didn't go into that on
8 redirect." He sat there and didn't, he looked at me, didn't
9 say a word. He heard everything I said then. He stopped
10 mid-sentence and looked at me.

11 Now Patricia Hollman. She testified that that
12 morning-- this is the woman that is going to get the 30
13 thousand dollar reward, and all she testified to: I saw him
14 that morning, she said approximately -- she saw him that
15 morning wearing Fila Grant Hill tennis shoes. And I remember
16 her testimony. Mr. Lumumba brings it out about ten or twelve
17 times something contrary to what I remember her saying, and I
18 want y'all to remember. I want y'all to remember what y'all
19 remember, not what I remember. And I'm going to do
20 everything I can not to misrepresent to you what the facts
21 are. But I remember her saying that he arrived back at the
22 residence between 7:00, between 7:00 and 7:30 and then stayed
23 there approximately 20 minutes. (Counsel writes on pad on
24 easel.) And then left. That's what I remember her saying.
25 That is Patricia Hollman. At that time she saw him when he
26 left initially, Grant Hill Fila, Fila Grant Hill tennis
27 shoes. No one has come in here and impeached her on that
28 whatsoever. Nobody.

29 Next is BoJack. BoJack told Mr. Johnson and he

1 testified it was on the day of the murders, albeit he said it
2 may have been the 17th, but he said it was on the day of the
3 murders at approximately 7:15. The Defendant Curtis Flowers,
4 the man sitting over there, a guy that he knew, and when you
5 get to this identification instruction, remember we are not
6 talking about someone like me on July the 16th. I had never
7 seen Curtis Flowers prior to July the 16th. Okay. But these
8 people knew him. They lived in the same community. Now
9 Porky Collins, to his knowledge he testified and quite
10 truthfully that he, that to his knowledge, he hadn't seen
11 Curtis Flowers prior to that day.

12 But anyway, let's get back to this. 7:15, BoJack,
13 who lives at the intersection of Highway 51 and Angelica, saw
14 him walking toward Angelica. There is Angelica right there.
15 Katherine Snow, who had absolutely no reason-- she is from
16 Durant, Mississippi, some space down the road, said she knew
17 Curtis Flowers, but she had no motive to fabricate anything
18 on him; another witness that no one has come in here and said
19 has been given any money, has been promised anything, was
20 never asked by Counsel for the Defendant, What did you
21 receive? Weren't you promised this, promised that? Nothing.
22 He just wants to leave some innuendo out there that there is
23 some reward that was out there that no law enforcement agency
24 was involved in in any way, that they are doing this for the
25 money.

26 But anyway, Katherine Snow said she arrived at
27 work, and she said between 7:00 and 7:30 A M. She goes out
28 and she, positive identification, positively identified
29 Curtis Flowers as the individual standing against Doyle

1 Simpson's automobile. That brings Mr. Doyle Simpson in the
2 picture. The Judge has instructed you on reasonable
3 hypotheses. So right now we have got Curtis Flowers, and we
4 have got Doyle Simpson. (Counsel writes on large pad on
5 easel.) Now standing next to Doyle Simpson's automobile, the
6 automobile that contained these projectiles-- strike that.
7 It didn't contain these projectiles. It contained the gun
8 that fired this projectile into the head of Carmen Rigby
9 between 9:55, 10 o'clock and whatever time Sam Jones walked
10 in there, you know, 10:10 or whatever. This projectile was
11 retrieved from the head of Carmen Rigby, the bookkeeper at
12 the store. This projectile was recovered from the mattress
13 that was next to that post in that photograph in the store.
14 These two were recovered, like y'all have heard testimony
15 about, from the post at Doyle Simpson's house, a guy they are
16 trying to put the finger on who takes the law enforcement
17 officers out to his house and says, "That's where I practice
18 shot my gun into that post." These two projectiles match
19 this one, this one, and another one, another projectile - I
20 believe this is it - 81, that was laying on the floor.

21 So we know, not 600,000 people that have Grant Hill
22 Fila tennis shoes, one of 600,000, no. We know that somebody
23 who knew about Doyle Simpson's gun that had Grant Hill Fila
24 tennis shoes committed this murder. Not somebody in
25 Wisconsin or Florida or anything like that. We know that
26 Doyle Simpson's gun killed Bertha Tardy, Robert Golden, BoBo
27 Stewart and Carmen Rigby in that store.

28 Think about that store. Highway 51 is right here.
29 Downtown, downtown Winona now. Y'all have to be reasonable

1 and the Judge tells you; I want y'all to use your common
2 sense. Downtown Winona. Somebody at random is going to rob
3 and kill somebody in a store, a furniture store in downtown
4 Winona? No. Maybe a convenience store out on the
5 interstate. Maybe a convenience store on 51, but not in a
6 location where a possibility of identification is greater
7 because of the greater population area. It's not happening.
8 It's not reasonable. Somebody was going to that store for a
9 particular purpose that did these murders. And I don't think
10 that is unreasonable to conclude that, ladies and gentlemen.

11 Now Eric McChristrian-- Edward McChristian. He is
12 just an old fellow sitting on a porch. He hasn't got an ax
13 to grind with anybody. Between 7:30 and 8 o'clock he sees
14 the Defendant, and keep in mind the Defendant says on that
15 day-- I'm not, we are not talking about time removed. We are
16 talking about that day that man said, I was not on that side
17 of the highway. He told them no. I'm not on that side of
18 the highway. And here is Edward McChristian; he says, Hey,
19 between 7:30 and 8 o'clock he is coming by my house up the
20 street.

21 Now keep in mind, and these investigators are
22 talking to large numbers of people. The guy from Weed
23 Brothers who said yeah, the Sheriff came by. They
24 interviewed everybody in our store. So they are talking to a
25 lot of people. He says he comes by between that period of
26 time, and no one has put anything on sworn that Edward
27 McChristian asked for one red cent for his testimony or his
28 cooperation or any other witness, any credible. That is
29 Clemmie Fleming. We will get back to that.

IN THE SUPREME COURT OF MISSISSIPPI

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EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 Now Mary Jeanette-- now likewise, Mr. McChristian
2 said he knew the Defendant. Mary Jeanette Fleming. She
3 testifies that she went to Weed Brothers, and a guy from Weed
4 Brothers said yeah, that was the 16th. How do you know?
5 That's the only day I wrote estimates, so we have got the
6 day. We have the day that she came down there and dropped
7 her car off was the 16th, the day of the murders. She says,
8 I called somewhere around 10 till, maybe 8:50, 9 o'clock. I
9 met the Defendant, Curtis Giovanni Flowers, right there
10 walking toward town. (Counsel points on Exhibit S-109.) I
11 saw him. I saw the Defendant walking toward town right
12 there, and this is a place he said on that day he wasn't on
13 that side of town. Another witness that no one has come in
14 here and testified to that she had told anybody that she was
15 offered one red cent for her cooperation.

16 Now let's get to Porky Collins. Porky said he came
17 around and something drew his attention to these two guys
18 arguing, and he made a loop, and he said, That's the guy
19 right there. That's the guy I saw. And he identified him
20 back in August of '96. August the 24th of 1996, he
21 identified the Defendant as being the individual that he saw
22 in front of Tardy Furniture at a point in time prior to the
23 time Sam Jones got there. It is certainly very, very
24 credible testimony from Mr. Collins regarding that particular
25 fact. And that is very, very important because how do we
26 know that who Porky Collins-- even if he only got a glimpse
27 of him, only if he did get a slight glimpse, and how do we
28 know he saw the Defendant, Curtis Flowers? Because Clemmie
29 Fleming testified that's the guy she saw running from the

1 store, and Roy Harris admitted under oath that Clemmie made
2 the statement after they had turned in front of Front Street
3 and gone down Carrollton. He said yeah. He admitted, he
4 admitted on this stand that he had testified to that before.
5 So what that does, it verifies Porky Collins' identification
6 of that Defendant.

7 Now the tennis shoes. (Counsel gets Exhibits S-93
8 through S-96.) These photographs were taken from the crime
9 scene; three photographs-- I mean three steps taken walking
10 from the back of the store to the front of the store. You
11 can look at the diagram. It will be in evidence. One here,
12 one here and one here. These photographs, according to Joe
13 Andrews, were consistent with Fila Grant Hill tennis shoes,
14 came out of that box.

15 All this stuff about the condition of the box, no
16 one has testified that this was the condition of the box at
17 the time that it was recovered. We did have testimony that
18 it was in better shape than this. No one has testified that
19 it was in that bad a shape. Joe Andrews did an examination
20 of it. It has been almost two years since it was recovered.
21 Joe Andrews testified that a Fila Grant Hill ten and a half
22 tennis shoe could not be excluded and that this shoe was
23 consistent, and that to his knowledge, there are no copycats,
24 there were no copycats at that time that would make this
25 impression, and he is an expert. He would know that, and he
26 said at the time I had information that there were copycat
27 Nikes out there with regard to Nikes. I had that kind of
28 information. There wasn't any information that there was
29 any Fila Grant Hill copycat tennis shoes at that time.

1 Counsel for the Defendant wanted to point out, well, you
2 know, it could have been that -- well, it could be that that
3 light, I can cut that light on by some other way than
4 electricity, but no one knows that. There is no facts that
5 back that up.

6 The Defendant was brought in, and he was questioned
7 and he lied. The first time they interviewed him, he lied.
8 How do we know he lied? It's the second time he came in he
9 changed his story. When he found out they were hot on his
10 trail, he couldn't say he got up at approximately 7:30. He
11 was out. He couldn't do that. He knew he messed up so he
12 testified-- strike that. He said, he told them, he told them
13 that he got up at 9:30. Two days later he changed his
14 story. 9:30, he says, but initially he says he got up at
15 7:30.

16 I want to point something out to you while I have
17 got it on my mind. This check, if I can find it - where is
18 the check?

19 (Exhibit S-63 handed to Mr. Horan.)

20 The check, he is lying about something else about
21 these batteries. He said that Ms. Tardy told him that the
22 batteries are going to eat your check up. He is lying about
23 that. I don't think he is lying when he -- he told them that
24 he called her four times about his check. I think, he didn't
25 lie about that. But Ms. Tardy didn't tell him that that
26 check was going to be, damage to the batteries and the \$30.00
27 loan, his check would be eaten up by that. She wouldn't have
28 written the check. That is a lie because he got the check
29 for the full amount of his compensation.

1 I think, and I think it's reasonable to conclude
2 that she told him, just like anybody else that runs a
3 business and some of you may disagree with me, but most
4 people who run businesses, you get paid; if there is any
5 deductions, in order to keep the books right, she has got the
6 time card. She wouldn't be keeping the time card if she
7 wasn't going to pay it. You get the time card and you write
8 the check. If there is any deductions, get the check, keep
9 your books right; then you make the deductions when you
10 settle up with that person. She wouldn't be running much of
11 a business if she could just arbitrarily just say, well, I
12 will just mark that off. That is not what happened.

13 According to his statement, he called her three or
14 four times regarding this check. Frank Ballard testified he
15 got summonsed to the store. He went in and Ms. Rigby was
16 upset, and who did he meet coming out? The Defendant. There
17 had been some problems at the store, it's reasonable to
18 conclude, with the Defendant. He wasn't showing up for
19 work. He wanted his check. He called three or four times.
20 After the 5th, he didn't show up. The check was made on the
21 5th. Here it is the 16th. Here is the check and the time
22 card.

23 I think that is important because we have looked at
24 this case for two years, and y'all have looked at it once,
25 but here is the 5th. The 5th of July when she wrote the
26 check and here is the time card, and here is a lady that
27 loaned the guy \$30.00 the first day he came to work. But
28 anyway, the check is for the full amount of the hours that he
29 worked. They haven't cleared up anything about any batteries

1 at that point in time. He was just trying to convince the
2 law enforcement officers that he had no reason to have any
3 more exact contact with Ms. Tardy. That's what he was trying
4 to do. On the 5th she wrote this check. It was laying by
5 her telephone, laying back there in her office, and it was
6 still there. And on that particular day he went down there
7 to settle up, and he did settle up with Ms. Tardy.

8 Jack Matthews had this Defendant submit to a
9 gunshot residue kit. Let's talk about that. Gunshot
10 residue, there are three possibilities. (Counsel writes on
11 large pad on easel while talking.) Those three possibilities
12 are as follows: Either you fired a weapon; either you were
13 in close proximity - I apologize for my handwriting - to a
14 weapon being fired; or you came in contact with GSR, gunshot
15 residue. No one has testified, nobody, nobody has testified
16 of any contact proof other than one question Mr. Lumumba
17 asked Jack Matthews: Didn't he hold a pencil that you had
18 been holding? Mr. Matthews said yeah. When was the last
19 time you fired a weapon? Back in hunting season.

20 So two of the three possibilities regarding gunshot
21 residue that Defendant was at Tardy Furniture Store when
22 those four people were killed, and there is no proof, not by
23 any cross-examination or by any case in chief for the
24 Defendant, any proof other than speculation-- well, there
25 wasn't any proof. You are going to hear some speculation.
26 There is no proof that the Defendant came in contact with
27 gunshot residue in the time frame that the experts testified
28 to that you would have to come in contact with it in order
29 for it to come up on a kit.

1 Mr. Campbell said on the 4th of July they did fire
2 some weapons out there, but Connie Moore's residence where
3 the Defendant says he was that morning, there is no proof
4 there was any guns in the house, any ammunition in the house,
5 anything like that. What does that tell you? On the web of
6 his hand a very small projectile-- I mean very small
7 particle, and it was very small. It was four hours after the
8 alleged time of the crime or the time of the crime, 10
9 o'clock that morning. About 2 o'clock this was done, gunshot
10 residue. And we were lucky enough, fortunate enough to have
11 some gunshot residue on his hand.

12 Now let me go back. We have another name that was
13 thrown in, Emmitt Simpson. When you talk about murder cases
14 like this, you talk about motive, and we know that money was
15 taken, and we know that at a point in time when Curtis
16 Flowers was borrowing \$30.00 from Ms. Bertha Tardy, \$255.00
17 was found in his house. They didn't take that money. At the
18 time they had no reason to take that money. They didn't take
19 prints or anything like that. Two days after the crime, he
20 was not under arrest. They had no lawful authority to take
21 that money, none whatsoever. He was not under arrest.
22 \$255.00 found in the headboard of the bed in his house.

23 On the 29th, sometime after that, he is not
24 working. By his own statement he quit work, just failed to
25 show up. She called. He just didn't show up. He called one
26 day and said he wasn't coming. The next day he didn't call
27 and tell her anything. So here is a guy that is not working
28 at all, no gainful employment. His girlfriend is working.
29 There is no explanation from her or anyone else before you,

1 no family member came in to say that was a gift to Connie or
2 anything like that, why that \$255.00 was found in his house,
3 approximately \$255.00, found in his residence in the
4 headboard of his bedroom, the same bedroom that the Fila
5 Grant Hill tennis shoe box was found that contained 10 and a
6 half Fila Grant Hill tennis shoes.

7 Now we have Emmitt. July the 16th Emmitt about had
8 a fit because his brother thought he had stolen his gun, and
9 apparently at that point in time he heard what happened at
10 Tardy's. By counsel's own admission, some of his own
11 questions that word spreads fast in a small town like
12 Winona. Even in Gulfport, if y'all heard about four dead
13 people here in the stores down here, you would hear about it
14 pretty fast.

15 But anyway, Emmitt is having a fit because he has
16 had some contact with Doyle, and Doyle had, you know, Doyle's
17 gun -- Doyle had reported his gun missing. Here is a guy
18 they want to put the finger on that first of all, reports his
19 gun was stolen, and then at some point in time - I think
20 around the first of August, maybe before that - takes them
21 out to his house and they dig. There is not stuff laying
22 around. They dig out of a post, dig out of a post two
23 projectiles. If he committed these four murders with no
24 motive whatsoever, there is no motive whatsoever to do that.

25 Here is a guy that at 10:30, he clocks out to go
26 pick up the meals, and we know that between approximately--
27 now we don't know exactly. Between 9:55 approximately and
28 probably 10:15, something like that, these crimes were
29 committed, but he is at work until 10:30. Counsel for the

1 Defendant wants to go into the fact well, you know, you
2 verified his alibi, but you can't tell this jury-- well, they
3 go to his place of work and talk to his employer. I mean
4 what else are they supposed to do? They talk to the people
5 he works with to see where he was at that point in time. So
6 Doyle--

7 **BY THE COURT:** You have got about a minute
8 left in half--

9 BY MR. HORAN: --on my half?

10 **BY THE COURT:** On half your time.

11 BY MR. HORAN: On half of the first half? I'm
12 going to go on if that's all right.

13 **BY THE COURT:** It's all right with me.

14 BY MR. HORAN: I want all the first half. I
15 am feeling pretty good.

16 BY MR. EVANS: That's on all of your half.

17 BY MR. HORAN: Okay.

18 BY MR. HORAN: On all my half? A minute?

19 **BY THE COURT:** Right.

20 BY MR. HORAN: Goodness.

21 CONTINUED ARGUMENT BY MR. HORAN:

22 Anyway, Doyle Simpson is eliminated. Now why
23 Emmitt Smith came into the picture, I don't know. But
24 anyway, they talked to Emmitt's employer at IBF, and he is
25 eliminated from consideration at all.

26 Now Curtis Flowers on the 16th and 18th, he could
27 not be eliminated because he lied to them about certain
28 things, changed his statement. They point the finger at
29 Curtis Flowers. And like they said, they point the finger at

1 Curtis Flowers; that's right. That's what we have done. We
2 have presented a case where people that knew him -- and real
3 quickly, this stuff about the clothes. I can't remember what
4 any one of y'all had on last Monday. I can't do it. I know
5 I saw every one of you. I saw every one of you Tuesday, and
6 if I saw one of y'all now in Grenada and it was something
7 that happened on that day, I would remember seeing you. I
8 know what I did, even though I was in Grenada, I know what I
9 did when those four people; I know everything I did that day
10 when those four people were killed. It's not important what
11 I did, but I do remember. And back, if someone had come to
12 me, if I had been in Winona and someone asked me, who did you
13 see, I could tell them. I can't tell you under my oath as an
14 attorney that I could, and as an officer of this Court, that
15 I could tell you what they had on. I could try to.

16 Now if Mr. John Johnson, our investigator, is going
17 to put this thing together and offer money, would he be
18 taking taped statements from people who were giving variance
19 in descriptions? I would hope he would do a better job than
20 that. He was asking them did they see Curtis Flowers, and
21 they said yeah. What did he have on? You know, and some of
22 them like even BoJack, he wasn't real sure. He was trying to
23 remember. He is trying to remember what he had on. But did
24 you see him that day? Yeah, I have known Curtis.

25 These are people that did not know [sic] Curtis
26 Flowers, ladies and gentlemen. These are people that lived
27 in the community with him their whole life. And they
28 remember where they were on the day of the murders and who
29 they saw. Some of them didn't come forward and it's evident

1 why. Y'all saw why. Y'all saw evidence of it here in this
2 trial, why they were reluctant. It was not because -- they
3 didn't come forward. Mr. Johnson was banging on doors. Jack
4 Matthews was banging on doors. They had to go find them.

5 They weren't coming up to the DA's office saying,
6 it's a thirty thousand dollars reward, which is important to
7 their case. They thought it was. All these witnesses say
8 that all these people said something about this \$30,000
9 reward. Well, you know, the time frame didn't match up. It
10 was three months before the \$30,000 reward, approximately
11 three months--

12 BY MR. LUMUMBA: Objection. Nobody testified
13 to that.

14 BY MR. HORAN: It's in the paper. They have
15 got the exhibits. They can look at the exhibits.

16 BY MR. LUMUMBA: Judge, that paper was
17 published long after the reward was \$30,000. It
18 doesn't say when--

19 BY THE COURT: Well, that is evidence for the
20 jury to determine. Go ahead.

21 BY MR. HORAN:

22 Well, they say it was two months. A lot of these
23 witnesses--

24 BY MR. LUMUMBA: --Why don't we say two weeks
25 to be a little more accurate.

26 BY THE COURT: He is entitled to argue, Mr.
27 Lumumba.

28 BY MR. HORAN:

29 But nonetheless, these people-- let's say it was

1 two weeks. Let's say it was a \$30,000 reward after two
2 weeks, which it wasn't. Would Clemmie Fleming wait until
3 April of the next year to come forward? And she didn't even
4 come forward. John Johnson had to find her. Why would she
5 wait four or five months? She would have been up there three
6 weeks later. Three weeks after this murder we would have had
7 our case, the case would have been locked up. If these
8 people had come forward for this reward money a month after
9 this incident, it would have been sewn up. That didn't
10 happen.

11 Jeanette Fleming happened to meet him. Mr. Johnson
12 went and talked to her, went and talked to her. There is
13 absolutely no proof that these people went out of their way
14 to come to the Highway Patrol, the Sheriff's Office or the
15 DA's Office to give this information. That tells you their
16 motivation is not money. They came forward, ladies and
17 gentlemen, and told what they saw. And if they are mistaken
18 about the clothes he had on, they were honest about it, and
19 they were honest about it here. They didn't change their
20 story. They knew they saw him.

21 Katherine Snow had seen him previously. I don't
22 know how long prior to her identification that he sang in
23 some gospel group. It may have been ten years; I don't know,
24 but she had seen him. She knew him, and she talked to Doyle
25 about that. But when you talk about this identification, I
26 want you to consider all the factors, and they are going to
27 want you to consider this thirty thousand dollar reward.
28 That's all you have heard about.

29 There has been no proof that Clemmie Fleming's

1 account is forgiven. It hasn't been washed out. If she is
2 going to come in here and lie because the Tardys didn't do
3 something for her, she would have changed her story. She has
4 told the same story every time she has been asked about this,
5 and I promise you one thing. I promise you this. If she
6 would have given a statement under oath to John Johnson
7 contrary to that, Mr. Lumumba would have been pounding her
8 with it, and it didn't happen.

9 Mr. Roy Harris changed his story. He went from
10 saying that Curtis Flowers, who he didn't know, and then he
11 said, told Mr. Johnson, I got a glimpse of him in the rear
12 view mirror. I wasn't paying attention. He changed his
13 story. He had the man stand up. That was not the man. He
14 couldn't do that with John Johnson. He told Mr. Johnson he
15 couldn't identify him. He has never been able to identify
16 him before, before Saturday. It's the first time he has ever
17 done that. He said he got a glimpse of him in the rear view
18 mirror. He gave Mr. Johnson dark skin around his face. Then
19 he testified he was light skinned. He said I told him he was
20 light skinned - fabrication. And this about the hearing aid,
21 it's a bunch of junk. He couldn't hear. My foot. He heard
22 exactly what Clemmie said, and all this screaming and yelling
23 was just a game.

24 This is more than a game to me, ladies and
25 gentlemen. BoBo Stewart is laying dead drawing his last
26 breath, a 16 year old fellow that was working because he
27 wouldn't work. He had a job because Curtis Flowers wouldn't
28 come to work. And so did Robert Golden. They had a job
29 because Curtis Flowers would not come to work and wouldn't

1 call in. All he did by his own admission in his statement
2 was get up, at lunch time get a six pack of beer, didn't want
3 to work, wasn't going to work. He thought he could talk to
4 Mr. Campbell about maybe going to New Orleans and getting a
5 job, maybe.

6 BY MR. EVANS: I think our first half is up.

7 BY THE COURT: Way up.

8 BY MR. HORAN: That's all I have, Your Honor.

9 BY MR. LUMUMBA: Let us approach the bench.

10 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
11 THE JURY AS FOLLOWS:)

12 BY MR. LUMUMBA: I do need a break long enough
13 to go to the rest room.

14 BY MR. EVANS: I do too.

15 BY THE COURT: Okay. Well, the jury probably
16 does too.

17 END BENCH CONFERENCE.

18 BY THE COURT: We are going to take about a
19 five minute comfort break, and then the Defense
20 will start their argument.

21 (FOLLOWING A BRIEF RECESS, COURT RECONVENED AT
22 12:12 P.M. ON 3/30/99 WITH THE COURT, ALL COUNSEL,
23 THE DEFENDANT, AND THE JURY ALL PRESENT:)

24 BY THE COURT: You may proceed.

25 FINAL ARGUMENT BY MR. LUMUMBA:

26 Good afternoon, barely, ladies and gentlemen. I
27 rise at this time to speak to you actually for the last time
28 in this trial. Because of the way the system is set up, the
29 prosecution has the burden of proof, so they get to go first,

1 and they get to go last, and it's okay with us. What we do
2 is we make a presentation in the middle which shares with you
3 our perspective on the evidence. There are so many things I
4 want to say now, and I don't have quite enough time to say
5 them. And I feel everything I want to say. Every word comes
6 not only from the book, from the law, but from the heart.

7 Where are we at? What is it that we do? We are
8 in a courtroom. A tragedy has occurred, and so we come here
9 together from different places in this community. We sit
10 down and the Judge reads us certain rules which we call the
11 law. And it asks us to try to unravel this tragedy and try
12 to make a decision. As two sides approach you, one side has
13 the burden of proof, and the other is saying not guilty, no
14 way.

15 So what do we do? Because see, we find ourselves
16 in time present and we look to time past. We find ourselves
17 trying to resolve a case which we were not there to observe,
18 and in fact, that if we were there, then we wouldn't be
19 here. So how do you look into time past and make a decision
20 in time present?

21 And it's very important, very important, and I
22 don't want to talk a lot of legalese. I don't want to spend
23 a lot of time on this because I want to get dead into the
24 facts, but please bear with me for a moment because this is
25 what it's all about. Because you understand, we have to ask
26 ourselves in this case what do we do when we have a case that
27 the State really just doesn't have enough evidence to solve?
28 What do we do when we have a mystery which they have never
29 unraveled which they could never really solve?

1 What do we do when they bring us one shoe box, one
2 print which could come from 660,000 people, and I don't care
3 what you say. There is no walls up in Winona. This is not
4 the walls of China. People come into Winona. Winona is off
5 55. Memphis is at the top of 55. Jackson is at the bottom;
6 New Orleans if you go further, Little Rock, and there are all
7 kinds of places in this world, so you don't have to be in
8 Winona. You don't have to live in Winona. You don't have to
9 know people in Winona in order to kill people in Winona.

10 So the question becomes what do we do when we have
11 an expert who tells us not that this is the print that
12 matches the shoe that came from this box, but this is a print
13 that matches-- this is not a print which matches the shoe.
14 He cannot tell you; he told you he cannot even say that the
15 print matched the shoe that was in the box. He cannot even
16 say that the print matched a shoe which is like the shoe in
17 the box. It is only a partial print. He doesn't have all of
18 the print. When you are matching a print, you need other
19 things. You need like wear and tear that you can measure.
20 He can't even say that. He can only say it's consistent.
21 And how many shoes is it consistent with? At least 660,000
22 shoes and then maybe some copycats. Do we have to prove
23 there is no copycats? What happened to the burden of
24 proof? I thought they accepted it. Do we have to prove
25 that there is other people who have shoes like this who leave
26 prints like this? What happened to the burden of proof? I
27 thought they accepted it.

28 Do we have to prove that Doyle Simpson or Emmitt
29 Simpson did it? We are not proving that anybody did it. We

1 don't know. We were not there. This man was not there. We
2 don't know who did the crime. Doyle Simpson won't even talk
3 to us. We are not the police. We don't have the burden of
4 proof. We can't handle the burden of proof. The law says we
5 are not required to prove anything. Please don't violate the
6 law. We don't know. Doyle won't talk to us.

7 There is two things that we ask you to remember,
8 please, very diligently. The Judge has read you the
9 instruction on reasonable doubt.

10 (Mr. Lumumba writes on pad on easel.)

11 The law says that they have to disprove or they have to prove
12 the case beyond a reasonable doubt, and in this case there is
13 one other thing. They have to eliminate every theory.

14 BY MR. EVANS: Your Honor, I object. That is
15 not the correct statement of the law.

16 BY MR. LUMUMBA: Consistent. Can I finish it,
17 please?

18 BY MR. LUMUMBA:

19 Consistent with innocence. (Note: Counsel is
20 writing on the pad while talking.)

21 BY MR. EVANS: And I repeat my objection.
22 It's every reasonable theory. It has to be
23 reasonable, or they do not even have to consider
24 it.

25 BY THE COURT: Well, I have instructed the
26 jury, and they will have those jury instructions
27 before them when they make their deliberations.

28 BY MR. LUMUMBA:

29 Please read these together. Reasonable doubt and

1 every theory consistent with innocence and, of course, since
2 we are talking about reasonable doubt, we are talking about
3 reasonable theories, but what do you mean? Are you going to
4 tell me it's not reasonable that somebody can come from
5 another place and commit a crime? Are you going to tell me
6 it's not reasonable that people commit crimes in downtown
7 Winona? Now people don't commit crimes in downtown areas?
8 That does not happen? People don't get robbed in banks
9 downtown? In stores downtown? Maybe if you come from
10 Memphis or from Chicago or from somewhere else or even from
11 Jackson, then maybe downtown Winona doesn't even look that
12 big to you. That is not reasonable that somebody else of the
13 660,000 people who may have come close to a pair of these
14 shoes could have committed this crime?

15 Doyle Simpson. Oh, he showed us those bullets. He
16 couldn't have done it. I don't know whether he did it or
17 not. All I'm saying is if you got somebody to say where he
18 was, then bring that somebody here. At least take a test of
19 his hands. And if he lied about where he got the gun from,
20 how do you know he is not lying about where the gun went
21 to? How do we know a gun was actually stolen from his
22 car? Katherine Snow didn't see anybody steal a gun from his
23 car. Maybe when we heard that a .380 committed a crime, if
24 he wasn't there, which he may have been, I don't know; I'm
25 not required to prove that. The man won't talk to me, but
26 maybe he sold a gun to somebody and heard about the crime and
27 then became nervous. He wouldn't tell you who gave him the
28 gun. How do you know he is going to tell you who he gave the
29 gun to?

1 Now it's okay to get a little neat theory, to walk
2 in and be the prosecution, but this is our theory. We don't
3 have nothing else, so this is our theory. A man who has been
4 reasonable all his life, no evidence that he is crazy, no
5 evidence that he ever was without a job for a substantial
6 period of time -- two weeks is not a substantial period of
7 time. There is probably not a person in this room who hasn't
8 been without a job for two weeks.

9 And you are just going to tear the man down.
10 Eighty-two dollars - you shoot four people for \$82.00? Where
11 is the evidence of this kind of insanity from this man? He
12 sings in a choir, and that doesn't make him a choir boy, but
13 where is the evidence of this kind of insanity? We do not
14 have to prove that he didn't do it. They have got to prove
15 that he did. We don't have the capacity to find out who of
16 the 660,000 made that print. And we don't even know, we
17 don't even know that one of the people who made that print is
18 actually the person that committed the crime. We don't know
19 that either. There is no evidence that the same person that
20 left the print committed the crime.

21 Sometimes we get caught up in tunnel vision because
22 it's what we are doing, what we think is right. Sergeant or
23 Mr. Johnson, Mr. Matthews, this is all they can see. But I
24 remember at least two people went into that place. Chief
25 Hargrove and Sam Jones, when they first went into the place
26 with all these dead people, they didn't even see the print.
27 Now they checked everybody's shoe. I don't know that they
28 checked everybody's shoe because I don't know how Sam Jones
29 goes in there the first time, sees four dead bodies, sees no

1 prints, and then comes out and goes back in, and the prints
2 are there.

3 And Sam Jones said he came there at 9:30. That's
4 what he said. I think the Court would allow you to read
5 transcript back if you need to. He said he was called at 9
6 o'clock, showed up at 9:30. Now he could have been wrong.
7 That is no magic number. We don't know when Sam showed up
8 for sure, the moment. But at least just say what the man
9 said in his testimony.

10 Doyle, Doyle Simpson's gun. We have got one-- and
11 let me talk about the toughest part of the case first, and
12 then I'm going to get down to some other aspects. They got
13 one particle, one particle off a man's hand. And look, it
14 wasn't necessarily from the web. And if you follow the two
15 witnesses, it appears that the gentleman who took the thing,
16 they didn't know what he was doing exactly because if you
17 remember, the experts say they are supposed to take it from
18 right around here on the back at the web. That's what he
19 said.

20 Mr. Matthews said that he took it on the back and
21 then wiped across the back of his hand. I didn't see the
22 expert go across the back of his hand. Now I don't know how
23 you are supposed to take it, so I don't know if Matthews took
24 it right or not, but I do know that if you took all of that,
25 if you tested all of this and came up with an infinitesimal
26 particle, you don't know whether it came from here, here or
27 here, or anywhere else on the back of the hand. And that is
28 exactly what Mr. Matthews showed us because I got him back up
29 to show you again.

1 You don't know that that particle came from Doyle
2 Simpson's gun. Why would anybody be remembering everything
3 they did with a gun or near a gun or near a dirty gun or near
4 a rag that was dirty from a gun at his father's house where
5 there is always a gun, with his relatives who have guns, who
6 shot guns that weekend in a town where people hunt who leave
7 dirty guns in different places, where guns get things dirty,
8 or where particles are left in closets where guns are which
9 leave particles? He is the only one tested. If you test ten
10 people, how many of them in Winona will come up with
11 particles of guns that they have come in contact with by
12 shaking somebody's hand, by holding something they have held,
13 by touching something they have touched, by touching a gun
14 that hasn't been cleaned, by cleaning a gun?

15 We don't have the capacity to examine everybody in
16 Winona and figure that out, and we don't even ask them to
17 examine everybody, but we say at least do three people. At
18 least do Emmitt Simpson, who was accused of taking his
19 brother's gun. Doyle thought he took it. Why all of a
20 sudden we know now he didn't take it? The first time you see
21 him he is running. Now look. I'm not trying to prosecute
22 Emmitt. That is not my responsibility.

23 But how are you going to focus in on this man
24 because he left a job or was told that there wasn't work for
25 him? I thought that the best explanation of the employment
26 relationship was the one they read in his statement. Sounds
27 very logical, didn't sound like a crazy man. Yes, I dropped
28 the batteries. At some point I felt that it was my
29 responsibility, didn't have a problem with it. Later on you

1 find out really didn't want to work there anyway. So what?
2 That is a motive to kill?

3 See, something is-- you often in our minds we read
4 something very sinister into the fact that a person is even
5 here. It is called the power of the accusation. The
6 prosecution accuses; then all of a sudden we see something
7 sinister. And then the police come to you and tell you, I
8 have excluded every possible suspect. It even seems more
9 sinister.

10 But look beyond the hypothetical. Look beyond the
11 accusation. What do we have? The impression which could
12 have been left by any number of a hundred of thousands of
13 shooters. And of course, I know that don't 660,000 people
14 come through Winona. But see, we don't know which ones of
15 them do and which one of them do not. And what we do know is
16 that this shoe box was found in a house of a man, and the
17 shoe box does not represent the only shoes that could have
18 made that print. If, and all-- don't we want the shoes?
19 Because if you had the shoes, you would probably know.

20 But if you listen to the testimony of the
21 relatives, there was a young man who lived there off and on
22 named Marcus who wore those kind of shoes. The shoes was in
23 his mother's bedroom where Flowers also stayed. There was no
24 prints of Flowers on the box. They don't even know that he
25 ever touched the shoes or the box. We don't have to prove to
26 you that because his prints wasn't on the box meant he didn't
27 touch it. They need some prints. They need to identify
28 those prints so they can tell you who did touch it. That is
29 their responsibility. That is why they send the box to the

1 lab. And then when they don't put the people on and we put
2 them on, and they say they found prints, and they didn't
3 match Curtis, they say oh, that don't mean nothing. Now what
4 would they say if it did match Curtis? Would it still mean
5 nothing?

6 Prints on the counter. You want to talk about
7 everywhere where prints won't take. Talk about where prints
8 will take. The expert says that the counter is excellent for
9 prints. A person taking money out of a drawer may touch the
10 counter and leave prints. I don't know if he or she did or
11 not. Assuming that some money was even taken out of the
12 drawer; I don't know that. But if your theory is that
13 somebody took money out of that drawer, then there is a good
14 reason why you take prints from the counter, and I'm sure
15 that's why the lady did it. She sent them in, and they
16 didn't match, and now we want to talk about, well, that don't
17 mean nothing. Well, at least in your theory it means
18 something. Because remember the experts say is that one
19 reason you don't always get prints even on a good surface is
20 because sometimes people wear gloves.

21 But you know that is not their theory because you
22 can't shoot Doyle Simpson's gun and get particles on your
23 hand and have gloves on. So you can't have it both ways
24 now. You can't have it both ways. Either the hand could
25 leave a print or the hand couldn't leave a print. He can't
26 wear gloves to protect his hand and at the same time shoot a
27 gun to get the particle. We don't know where the particle
28 comes from.

29 I mean, you know, I know we do all this; defense

1 attorneys do all this fancy stuff trying to make a point, but
2 look; that's the point. We don't know where it comes from.
3 We don't know that the man ever put on whatever was in this
4 box in his life.

5 Patricia Hollman. Look; forget about the witnesses
6 that came in and said she was lying. Why did somebody at
7 7:30 in the morning know what kind of shoes somebody else was
8 wearing? Nobody has been killed at Tardy's. Nobody knows
9 that there is going to be a print left. Why did somebody
10 really remember that that particular morning somebody had a
11 pair, not just of Fila shoes, Fila Grant Hill shoes. Really
12 now. And then talk about it like the whole thing is not
13 important. Yet one of your most important pieces of evidence
14 is some alleged sighting of some clothing which you don't
15 even have? So you want to bring somebody else in here to
16 say that he had them? And then you say clothing isn't
17 important. Of course, you have got to say that clothing
18 isn't important. Because if clothing is important, then this
19 case shouldn't even be here. No, that is right. I agree;
20 people don't always remember the clothing.

21 And over seven or eight months later people don't
22 remember what day they saw you either. In fact, sometimes
23 two or three days later or even later on that day people get
24 confused about when they saw somebody. You can use your own
25 common experience and the common experience of others. How
26 many people in this world see somebody and really pay that
27 much attention to a man walking down the street with baggy
28 pants and are going to say well, that was on the day of the
29 murder? A month later? How does he know that?

1 And your boy up here - what is his name? - BoJack
2 is an excellent example. "BoJack, what date was it?"
3 "17th." "17th of what?" "What you want me to say, man?"
4 "BoJack, I just want you to tell me what month it was."
5 "What you want me to say?" "BoJack, what year was it?"
6 "What you want me to say, man?" "BoJack, didn't you say the
7 person had long white pants on?" "What you want me to say,
8 man?" "And a black sweater?" "What you want me to say?"

9 Look, the Judge will say, as he has said already or
10 as he put in his instructions, the instructions continue to
11 speak to you when you are in the jury room, and I believe he
12 sends them to the jury room with you so you can read them.
13 He said don't let sympathy get in the way. Hey, we don't
14 want no sympathy. We think justice will do. Don't let bias,
15 any kind of bias get in the way even if the kind of bias
16 which we all have as human beings. We are biased toward
17 people who have died. We don't like that. It makes us mad.
18 And when they flash pictures of dead bodies in front of us
19 time and time again and blood and bodies and blood and
20 bodies, then we get involved, and when people get on the
21 stand who have lost loved ones and they cry, that emotionally
22 moves us. But I didn't make Ms. Ballard cry, and even if you
23 think I did, hold it against me, not Flowers. The person who
24 actually committed that crime made Ms. Ballard cry. And the
25 question is do they have sufficient proof to say who that
26 person is, not do they just come up with a theory because
27 they don't have anything else. That is the question.

28 A man leaves out of his house between 7:00 and
29 7:30. I'm not going to hold her to the minute or to the

1 second. Stays in the house for 20 minutes, came in the house
2 and went out of the house the same way with a white T-shirt,
3 black silk pants or silky pants. You know what she is
4 talking about, windbreaker kind of stuff; warm ups we used to
5 call them in the old days; jogging pants they call them
6 sometimes now. Leaves-- this is their theory. Now if you
7 don't want to follow the clothes, then how can you follow the
8 date of the identification? How can you be so sure that they
9 are certain about dates because dates are forgotten as easy
10 as clothes.

11 Nothing was important about that day at 7:30 in the
12 morning. Nothing was important about that day until much
13 later, and nobody could possibly have been talking about
14 connecting Mr. Flowers to that case on that day, so there
15 would have been no reason for anybody who saw him on that
16 day unless they had some kind of special relationship with
17 him to remember. And look, I don't care. I even say that
18 about the alibi witnesses or the witnesses who came in here
19 and say I saw him over at his sister's house and stuff. I
20 don't have to prove anything. We put them on because we want
21 to show you that just like they have got people who think
22 they know when they saw him, we have got people who think
23 they know when they saw him. I don't know if they remember
24 or not. And if we were in a position where we were trying to
25 prove something beyond a reasonable doubt, we don't have to
26 prove anything. We could never make it with those
27 witnesses. And they can't make it with the ones they have
28 got.

29 And all this intrigue, I mean who am I? Who am I

1 counsel? Who is Mr. Flowers? Who is his family? Are we
2 some kind of demons so that they can put people on the stand
3 and when they get caught in lies -- why did that woman lie
4 about the age of her children at the previous hearing under
5 oath? Sometimes the slips are very little, but then they
6 come through. Nobody forgets things; a mother doesn't forget
7 the age of a child that young. You get to be an old guy like
8 20, 25 or 30, maybe the mama will forget how old you are, but
9 not down in the 8, 9, and 10. They don't forget that. She
10 don't miss by two years.

11 BY MR. EVANS: Your Honor, I object. Two
12 months is a little different than two years, and
13 that is completely--

14 BY THE COURT: --The jury has heard the
15 evidence. They can evaluate it.

16 BY MR. LUMUMBA:

17 Let me go on. In 1987, October of 1987, she said
18 the young man was 11 years old. It comes to pass now when I
19 asked her standing there with a document in my hand, when I
20 asked her today, she says that same young man who she said
21 was 11 years old two years ago is now only 11 years old and
22 will be 12 this year. That is two years. And we don't like
23 to bring a brother in here to testify about his sister and
24 certainly not a joker who tells you that he was, he was
25 conniving himself. But if somebody writes us a letter, says
26 that me and my sister were talking about a reward, then what
27 kind of lawyers are we if we don't put him on the stand to
28 tell what he has got to say? And how are you going to
29 disbelieve him? Beyond a reasonable doubt disbelieve him?

1 I mean how do you know what the relationship there is?

2 I mean Patricia Hollman don't wear no halo because
3 she is here in court testifying for the State, lying about
4 the age of her child two years ago, saw some shoes way in the
5 morning - I don't even remember the time of year - remembers
6 that she saw some shoes. And the reason she remembers is
7 because she bought some Filas for her two boys, didn't say
8 nothing about the girl, for the two boys, and yet we ain't
9 seen none.

10 Excuse my emotion, but I'm just trying to make a
11 point because I think this is a very important system, a very
12 important case. And it's cases like this which will show
13 whether the system works or not. When we are talking about
14 stealing bubble gum, that is not difficult to deal with. But
15 we are talking about tragedies, and it really comes to a
16 question of whether we hold them to their burden of proof.
17 How are you going to deal with this?

18 A man leaves here, according to their theory, with
19 jogging pants, windbreaker pants, T-shirt, pants black, shirt
20 white. He is supposed to be going down here past BoJack's
21 house who says, "What you want me to say, man?" He goes past
22 here, and all of a sudden he has got white pants on, black
23 sweater, and the longer that the interviewer talks to him the
24 sweater begins to change into a gray shirt with short sleeves
25 with some writing on the front. But the pants never change,
26 so they are still white.

27 He gets all the way down here to this lot,
28 according to the prosecution's theory, and according to this
29 man that they want to believe, Doyle Simpson. He tells them

1 that the woman told him-- her--him, although the woman
2 wouldn't tell us this, but the woman told him that the man
3 had blue shorts on. Now you noticed that they sent some blue
4 shorts to the lab, right, and you know that Doyle Simpson is
5 his uncle. So Doyle Simpson knows he has got blue shorts,
6 but she didn't tell us that she said he had blue shorts on.
7 Now Doyle Simpson said she told him he had blue shorts on,
8 but if he had blue shorts on, what happened to the white
9 pants? What happened to the black pants? Has a cap on even
10 though she says the man she saw didn't have no cap.

11 And not only does this man change clothes, he
12 changes heights because when they first talked to her, 5'6",
13 or at least that's what is on the tape. And remember what
14 Roy said, and I don't know that these people are the same
15 people, but what Roy said, the man he saw running was 5'6"
16 about. So here is a man that not only changes clothes, but
17 changes heights. He is like Superman. He jumps into a phone
18 booth and changes clothes. And so here is a man that then is
19 supposed to leave here, come past Academy Street, and while
20 he had blue shorts on in the parking lot, when he passes
21 Academy Street, he has baggy pants on which are not
22 consistent with either one of the descriptions.

23 And then he goes down here, and he comes down what
24 we call, comes up Campbell Street which is somewhere up in
25 here. Campbell Street is somewhere up in here. You can find
26 it on the map. Here it is right here. Right here, right
27 here. He comes up Campbell Street where according to
28 Jeanette Fleming, who Mr. Pickens had no problem telling me
29 on tape twice, not that he thought she turned north, because

1 see there is a problem here with Jeanette. Let me just pause
2 here. See, because if Pickens is here and Jeanette turns
3 north, then that means she is going this way down Vine
4 Street. She is going away from the direction that she is
5 supposed to have met Mr. Flowers.

6 Now you know in actual, we are asking questions we
7 are not even thinking about. We are trying to ascertain the
8 time that the window was changed and all that kind of stuff,
9 which now is a mystery again, because he looked at the thing
10 that we thought was saying 8 o'clock on the 16th and told you
11 he can't even say that it was 8 o'clock on the 16th. And
12 that is not to criticize him. It was a long time ago, but he
13 told us clearly and unequivocally she went north.

14 Now don't believe Roy if he comes in here and says
15 that what they put in his other statement was something that
16 came from constant urging, from the police, the people with
17 the power to put you in jail. Don't believe that. But if a
18 guy comes in here and tells that Mr. Lumumba just kept
19 talking about what direction it is, what direction it is,
20 what direction it is, and Mr. Lumumba, who he has never seen
21 before, who can't do a single thing to him except talk to
22 him, then believe that somehow Mr. Lumumba influenced him
23 into saying north on the tape twice clearly on his own
24 accord.

25 Because see, we are demons. We are the defense.
26 We are the other side of the tragedy, and we are not on the
27 other side of the tragedy because we want to be. We are on
28 the other side of the tragedy because they can't find nobody
29 else. And they believe, they believe, but they believe

1 partially because they don't have anything else. And their
2 belief is not supposed to be your belief. You are the jury.
3 You look at all this objectively. I say strongly this man is
4 innocent. You don't accept that. They say strongly he
5 committed the offense. You don't accept that. You are
6 somewhere in between, and you put us both aside, like us or
7 not.

8 And so you ask yourself how at this point when he
9 gets to, on allegedly on Campbell Street when Jeanette
10 Fleming, who was supposed to have turned north, somehow meets
11 him going the other direction? How? How does his clothes
12 change again? Now he has got black dress pants or dressy
13 looking jeans, white button down shirt, a windbreaker jacket
14 that is gray with purple on it. Remember he didn't have a
15 windbreaker jacket before. Now he had windbreaker pants
16 which were black, not purple and not gray. These are the
17 people that if they are even trying to tell the truth, and
18 I'm not-- I don't know them. I don't know. You don't
19 either. And they don't become saints because they testify
20 for the State. Even if they are trying to tell the truth,
21 they obviously are confused. And I can understand that if
22 you don't make a statement until almost a year after the
23 incident, like Clemmie Fleming doesn't make a statement until
24 4-11-97. The other Fleming, Jeanette Fleming doesn't make a
25 statement until February of '97. The incident occurred in
26 '96 in July.

27 How much can you remember back then, and you want
28 to talk about an exciting event on the day. You think of
29 exciting events that happened in your lives. When I think of

1 that, I think of John Kennedy being assassinated, but
2 whatever you want to think of. I know where I was when I
3 heard that he was assassinated, but there is no way I could
4 tell you what I was doing before that, after that, or even
5 probably 20 minutes before that. You don't remember
6 everything that happens in the day just because you remember
7 what you were doing at the actual event itself.

8 And nobody that has testified has seen the actual
9 event. Nobody saw the people shot. Nobody saw anybody in
10 the building. Nobody saw anybody coming out of the
11 building. Clemmie Fleming never testified that she saw the
12 man coming out of the building. They got her testifying that
13 he was some 75 yards away running, and what do they say?
14 From in the direction of the building. What does that
15 mean? If you are 75 yards away, you can be coming from
16 almost any direction except from the direction which you are
17 running to.

18 Just like Mr. Collins; all of a sudden he is
19 heading toward Tardy's, and at least three or four times in
20 previous testimony and other statements he says that the men
21 walked north. Yes, they crossed the street. North across
22 the street is Coast to Coast. They may have been going to
23 buy something at Coast to Coast. And it wasn't Curtis
24 Flowers. If it was, then they are all mixed up because why
25 would he be leaving a car, going across the street with
26 another man, and then have to be later down the street
27 running to get away from the crime scene?

28 Now maybe there is some answers to that. But
29 remember, the prosecution can't, the prosecution has got to

1 answer questions with evidence. We can raise questions.
2 There is nothing wrong with that. In fact, that is how you
3 figure whether there is a reasonable hypothesis or a
4 reasonable set of facts which is consistent with innocence.
5 We raise questions. They are supposed to answer questions
6 with evidence, not with other questions or with speculation.

7 We haven't proved how he got the particle. We
8 don't have to prove how he got the particle. We don't know
9 how he got it. He don't know how he got it. We have got to
10 prove that he wasn't lying about his case. Look, first of
11 all, if he committed the crime, he knew the first time they
12 took a statement from him what time the crime occurred. That
13 is something you do remember. And so if he was going to lie,
14 he would have lied in the first time. He would have said
15 that he was anywhere at the time that the incident was
16 occurring. He wouldn't have to change times two days later.
17 He changed times because he didn't remember and don't
18 remember. And most of us, if we are not in an official
19 setting like this, we are just laying around at home or doing
20 something like watching the kids; we don't remember exactly
21 what time we went to the store or went over to our sister's
22 house. Why should we? If anything else came out of his
23 mouth, that would probably be the lie.

24 Mr. Collins says that it was 9:15 to 9:20 that he
25 saw the people going into the store on his statement. Yet we
26 know that he went and got a receipt that said 9:43 that he
27 was at Wal-Mart, and after he went to Wal-Mart, he went way
28 down in the opposite direction. Wal-Mart is up here
29 somewhere. He went way down in the opposite direction from

1 Tardy's. I think it is actually this direction, way down
2 south to get to a place which is not even on the map called
3 Don Mitchell's. He dropped off some spark plugs, came all
4 the way back here, went by his house, and he is real confused
5 about that.

6 And actually, we want to show you how people's
7 memory have problems, but he-- it's not a question of
8 questioning his integrity and stuff. It's just a question of
9 questioning people who think they can't make a mistake.
10 Because see, what he told us, a lot of times there were
11 inconsistencies from what he said in previous occasions.
12 That doesn't mean he is a liar. I don't know whether he is a
13 liar or not. I'm not speaking for him or against him. But
14 I'm saying that there is unreliability there.

15 And certainly there is unreliability with a split
16 second glimpse. A month later you are going to see a lineup
17 and from a split second glimpse, you are going to positively
18 identify somebody? And the man was trying to tell them;
19 first of all, he identified three different people in the
20 previous lineup. He didn't identify them positively, but he
21 said two resembled, but they had hairlines which were
22 different. Doyle Simpson, he pointed to, and he said that
23 his hairline was the same and his face looked the same and
24 everything else, but the complexion may have been a little
25 off. And then he says to Curtis Flowers, "looks like him,"
26 "could be him," and all that stuff. And then only at the
27 end when they say, Do you know Curtis Flowers, and it is a
28 small community. At this point everybody knows who is the
29 suspect. And the name comes up; he has just pointed to a

1 man, "Yeah, I know that's the man I saw in front."

2 It is not dishonest. The experts will tell you
3 that is how eye witness identification is. People are under
4 stress when they try to make eye witness identification, so
5 any little thing can set them off. But most times people do
6 not pick people because that's who it was. They pick people
7 because they know the other people in the lineup was not the
8 person. It's just like a multiple choice test. So what you
9 can do; you can look at the pictures yourself, and I don't
10 need to be dragging it out now. That man's head is sticking
11 out like a watermelon. Now why didn't they use the same
12 lineup they showed to Snow? Now Snow's lineup was an
13 excellent lineup. It was great. You really can't tell any
14 characteristic difference between the people. She picked out
15 Curtis because she knew Curtis. But the other lineup is
16 terrible. And Snow picked out Curtis because she knew
17 Curtis, and she does because she has seen him before.

18 But she never told them. Remember this. Because
19 see, sometimes people transpose things in their mind. They
20 are trying to deal with who they saw. They really don't
21 remember who they saw because they really didn't look that
22 careful. Then all of a sudden, Curtis Flowers is a suspect.
23 Curtis Flowers. Curtis Flowers. And then all of a sudden
24 the thing that happened at the same thing comes together with
25 what happened on that day and boom, it's Curtis Flowers. How
26 do I say that? I am not just saying that out of
27 speculation. Because if that is not true, then why didn't
28 she say it was Curtis Flowers the first day she saw him? Her
29 statement was that she knew she recognized him, but couldn't

1 remember who he was. She didn't tell the police officers she
2 recognized the man. Nowhere is that in the notes, and there
3 is no way that you are a competent police officer and you
4 don't write that down. Because anything that has anything to
5 do with finding out who the person is, who the suspect is,
6 the identification of the person, you cannot afford not to
7 write it down. Then she didn't tell them on 7-25 when they
8 talked to her again. She claimed that she realized who it
9 was on the evening of the incident. She didn't tell them
10 even at the lineup who it was which didn't happen until 8-19
11 as far as she was concerned.

12 No, we can't say anything for sure. But is that
13 proof beyond a reasonable doubt? Is that the kind of witness
14 that you would want your loved one to get convicted based
15 upon their testimony? Which one of these people in their
16 different clothing? There are suspect circumstances, their
17 late talk. Which one of them would you want to be relied
18 upon in a case that involved your loved one?

19 BY MR. HORAN: Your Honor, that is not
20 proper. He can't put the jury in that position.

21 BY THE COURT: That is true. You can't do
22 that.

23 BY MR. LUMUMBA:

24 Excuse me. We don't want sympathy. We just want
25 justice. So we have all the conflicting identifications, and
26 Clemmie Fleming's-- look. You forget about what people said
27 about her. You forget that, that three people related to her
28 and one person not related to her said she is a flat out
29 liar. Forget about that for a moment because you can't

1 forget about it in the jury room because that is not the
2 law. You have got to consider everybody's testimony, and
3 there is no reason for you to believe that those people are
4 lying.

5 But even if you want to, if you even want to think
6 she is a saint because she is a prosecution witness, her
7 story didn't sound right when she first told it. You don't
8 pay a man to take you all the way down to the store to pay on
9 furniture which they are about to seize; they are about to
10 take your stuff, and you are going to pull right up at the
11 door in front of the building and because you don't feel like
12 it, she didn't go in. Didn't give you no specifics, and lo
13 and behold, I'm not going to say what women go through when
14 they are pregnant because I don't know. But she didn't give
15 you no specifics of what it was that she wasn't feeling
16 right. But what is it that can stop you from walking through
17 a door two or three feet away to pay a bill that you have got
18 to be paid or sending a man that you paid to take you there
19 inside to get the people to come out and get the money if you
20 don't trust him to pay the money? That story didn't sound
21 right when you first heard it.

22 And why is her family-- the question is her family
23 is turning on her. Does her family think she is a liar? Do
24 they know something you don't know? A woman comes in here
25 and says, "Look, I don't have time to keep up with Clemmie.
26 I have got two jobs." She is not a bum. She is not a liar.
27 She is not out to harass people. I have got two jobs. Mary
28 Fleming, her sister, says that when Clemmie came there, she
29 came over to her house, and she took Clemmie to the scene,

1 and Clemmie didn't profess any knowledge of anybody running
2 out there. She never indicated she had been up there that
3 day.

4 And Roy; Roy is just, how are you going to say
5 that? How are you going to sit, how are you going to say
6 that the man can hear or didn't have any problem hearing?
7 And even Johnson says he has problems hearing at times. How
8 do you know? And why would the man come in here and say
9 that he lied because she was influencing him, and she lied
10 and tell you what?

11 What is it that is driving all these people in
12 here? I mean are we the boogie man? Are we demons? What
13 do we do? We don't have anything. If we do, prove it.
14 Don't speculate about it and then try to act like it's proof
15 beyond a reasonable doubt. Don't just make witnesses
16 disappear with the slight of the hand or nod of the head, or
17 you know how they are. You see what kind of pressure she is
18 under. What kind of pressure is she under? Other than
19 witnesses coming in here and telling the truth about her
20 lying?

21 And if it's anything other than that, then they
22 ought to prove it. I don't, I wonder what is the implication
23 here? What is the insinuation here? And who are we talking
24 about? You have got Clemmie Fleming's family who are not
25 related to Roy Harris in any kind of way. You have got Odell
26 Hollman, who as far as we know, don't know any of them. You
27 have got Ken Pickens, who said the woman went north and who
28 clearly is not related to any of them and as far as we know,
29 don't even know any of them. And there is some insinuation

1 that this is this demon in the background that is driving
2 them to do something.

3 Yes, we raised the question of reward, not because
4 we think that every witness that gets on the stand is money
5 hungry and greedy and just trying to grab the reward, but I
6 am saying this. When you have failing memories, when you
7 have people who don't come up until late and even sometimes
8 when you have people like Patricia who lie about the age of
9 their children, yes, reward can be of some influence on some
10 people. And we would be derelict not to bring it out. We
11 would be derelict not to ask the witnesses who knew about it
12 if they knew about it.

13 Of course, they haven't got it. The reward is
14 given upon conviction. So that don't mean they are not
15 hoping to get it. And who, which one of them was going to
16 tell you? How are we going to find out? How are we going
17 to do any more than what we have done by bringing people in
18 here who are close to them, who talked to them, and who tell
19 you that they told a lie?

20 All we ask is to examine the real state of the
21 case, and perhaps if we make the decision which the case
22 evidence justifies that there are reasonable hypotheses which
23 are consistent with innocence and that this is not a
24 situation where they have proven their case beyond a
25 reasonable doubt, then perhaps if we make that decision,
26 somebody will go back to work and find the person who is
27 really responsible for this crime or the people who is really
28 responsible for this crime.

29 I mean even with the gun; remember that Doyle

1 Simpson said that he kept, the gun was in his mother's
2 house. And he went and got it and put it in his car. So how
3 does Curtis know it's in the car? And then the prosecution
4 asked him one of these wide open questions, does he know you
5 carry a gun. What does that mean? People usually carry a
6 gun on them often. There's no statement that he knows he
7 carries a gun in the glove compartment. That was never
8 testified to. So how does Curtis know that there is a gun in
9 the car, in the glove compartment or in the car anywhere
10 else? And I don't want speculation. I want you to show me
11 in the evidence where he knows.

12 First of all, we don't know that the person who did
13 the shooting was the person with the shoes on. We don't know
14 this. Nobody saw the person do the shooting. But even if he
15 was or she was, you don't have to be Curtis Flowers to wear
16 Grant Hill Filas and shoot a .380 or to know Doyle Simpson
17 and to buy a gun from him, borrow a gun from him, and then
18 get involved in some mischief and some tragedy which you
19 should not be involved in.

20 And then this evidence about the \$255; oh, please.
21 I mean do I have to hide my money in my house? I mean I
22 can't keep no money in my house? Somebody is going to come
23 in there and think it's stolen loot from a crime? There's
24 no evidence that the money even was brought into the house by
25 Curtis. And by the way, Curtis said in his statement that he
26 was getting unemployment checks which meant that he must have
27 been working somewhere else before he went to Tardy's because
28 you know you don't get no unemployment check for working four
29 days at Tardy's. He was working.

1 So it's a tragedy that Stewart died. But that is
2 cheap. That is cheap. You don't know nothing about that
3 man's life to be talking about him like that. Ms. Tardy
4 hired who she wanted to hire after apparently trying to get
5 him to come back. He didn't want to come back for whatever
6 reason. He doesn't want to come back; he apparently doesn't
7 go down there to get the check. She has got an \$82.00 check
8 for him. I don't know whether she said it was available or
9 she is planning on mailing it or what. Two weeks later you
10 would think she wasn't planning on mailing it. Maybe she was
11 just holding it even though she had written it out. The
12 check is written on the 5th. So it looks like that even
13 after the batteries were dropped on the 3rd, she did intend
14 to give him a check. That's what it looks like.

15 So that's what makes me even wonder even more why
16 would he be so mad and so disturbed that he is going to come
17 down there and shoot some people? Going back to a job which
18 it appears from all indications he didn't really want to go
19 back to anyway? For some batteries which he either did pay
20 for and still had money left over or didn't pay for, and she
21 was going to give him the \$82.00? I don't know. I mean I
22 don't know the answers to those questions, and neither do
23 you. And nobody knows them but Ms. Tardy.

24 I mean, you know, this motive thing; what is-- I
25 mean and Mr. Ballard comes in and says that he was the man
26 that came when they had employment questions. He gets
27 called. He sees Curtis walking out the door, and he goes in
28 and Ms. Rigby is upset. So what does that mean? Does that
29 mean, are you supposed to say oh, Curtis made her upset? I

1 mean come on now. I mean why bring wild speculation into
2 this case like that? Do that, is that what you need to prove
3 your case? Is that the best you can do? Ms. Rigby could
4 be upset for any number of reasons that have nothing to do--
5 he didn't see Curtis do anything to Ms. Rigby or say anything
6 to Ms. Rigby. She could be upset because somebody called the
7 store and said something wrong. I don't know, and I don't
8 have to find-- but you can't just throw that kind of cheap
9 stuff in. And why did he work there for three more days if
10 he did something terrible to Ms. Rigby?

11 We raise this question about Mr. Collins and the
12 route he took because it did seem like Mr. Collins was
13 getting confused quite a few times, and we just wanted to
14 know why he didn't take the most direct route to what would
15 be Carrollton Street and what would be right here where the
16 cleaners is at on Front Street. The most direct route would
17 have not even taken him to 51 and not taken him down Summit
18 Street which meant that he would not have seen two men. You
19 can deal with that for what it's worth because I mean quite
20 frankly, I don't think there is any way in the world anybody
21 can rely on Mr. Collins' identification with a split second
22 glance. And he was honest enough to say that that was really
23 what it was. But it is just raising questions, and if the
24 men are going toward, the men he sees are going toward Coast
25 to Coast, what difference does it make anyway? And you
26 can't be north of Tardy's and go north and still wind up
27 going to Tardy's.

28 And remember when we talked about it at first; we
29 look at what people said yesterday and compare it to what

1 they said today. That doesn't mean that you cannot listen to
2 what people say today and say, well, I think that what they
3 said yesterday was incorrect and what they are saying today
4 is correct. All I'm saying is that you have got to at least
5 look at it. You have got to evaluate it, and I'm trying to
6 say that you have got to realize that this is real important,
7 and it's beyond a reasonable doubt, and I don't know how you
8 can believe a man beyond a reasonable doubt who says one
9 thing today and another thing yesterday.

10 I'm not asking you to believe Roy Harris beyond a
11 reasonable doubt although I believe him to the bottom of my
12 heart, and I think that he looked right at you. He told you
13 what happened, and he was very clear. But you don't have to
14 believe Roy Harris beyond a reasonable doubt because Roy
15 Harris is called by the Defense, and the Defense is not
16 trying to prove anything. What you have to do with Roy
17 Harris' statement is you have got to look at Clemmie Fleming
18 and see if you can believe her beyond a reasonable doubt.

19 And how do you know when a person is telling the
20 truth when they say one thing one time and another thing
21 another? As I indicated, the Judge will give you the
22 instructions.

23 Look at a couple of other small things. There is a
24 lot of confusion even between Ms. Snow and Doyle Simpson.
25 Doyle Simpson says his windows was up. Remember, that is his
26 excuse for having to go outside where he is supposed to have
27 discovered that the gun was stolen. That is his excuse for
28 going outside to let the windows down, but remember, Ms. Snow
29 said the windows were already down, and that is more than a

1 small matter. You know why? Because the person that is
2 getting in the car, if you assume it's not Doyle, somebody
3 who has no right to be in the car, they can't let Doyle's
4 windows down because Doyle corrected me. He has got power
5 windows, so you can't roll Doyle Simpson's windows down. You
6 have got to have a key to turn the car on and let Doyle
7 Simpson's window down. That's how I understand power
8 windows.

9 So if Snow says the windows were down, Doyle says
10 they were up. Who is right? Who do you believe? And why
11 would Doyle say that? Is he just trying to get a reason why
12 he went outside, and he went outside right around the time
13 that they say the killings occurred. He didn't have to check
14 out except when he leaves for good and when he comes in in
15 the morning. Apparently they don't keep records of that, and
16 I'm not saying Doyle did it. I don't know whether he did it
17 or not. I can't prove that, but I am saying these are
18 questions. And they checked-- who did they check to say what
19 he did when he went outside with the car? Who could tell
20 them what he did and where he really went when? Who could
21 tell them that?

22 All these people say they never saw Mr. Flowers do
23 anything unusual. Here is a man that if you want to listen,
24 if you want to believe the prosecution's case, he is walking
25 down a street, on Campbell Street, done changed clothes five
26 times. Walking down the street, he is approaching an area.
27 He is going there to do a heinous crime, going in there to
28 murder people because he is mad at them because they held on
29 to an \$82 check. And then he walks past Ms. Jeanette Fleming

1 and says, "How are you doing, good looking?"

2 I mean that don't seem to me to be the kind of mind
3 set a man that was going to kill some people would have.
4 That don't seem to me to be the kind of mind set that a man
5 that was within two blocks of robbing some people would
6 have. It seems to me that she got her mornings mixed up.
7 Now I'm not saying that she didn't take her car down there
8 that morning, although it's not clear that she did since the
9 sheets are messed up, and if you look at the sheet that Mr.
10 Ken Pickens filled out, you can see somebody crossed out her
11 name for whatever reason. But if you look at that sheet, you
12 will see it has no date on it. The only date on that whole
13 exhibit is the date where the window shield, windshield was
14 ordered.

15 And that windshield was ordered at 8 o'clock - that
16 is another problem - not at 9 o'clock. She said that she
17 called the day that she took it down there. She called at 5
18 minutes before she went. She called at 9:15. She went down
19 there about 10 minutes to 9. That's what her testimony was.
20 That sheet says that whenever that windshield was ordered it
21 was at 8 o'clock, 8:02 which means that in order for it to be
22 ordered at 8:02, the customer would have had to call in and
23 requested it before 8:02, either the day before or earlier
24 that day. And if she is just mistaken about the time and she
25 is right about the day, that means that she would have been
26 down there before 8 o'clock which puts her in problems with
27 the guy who sees him on Academy Street between 8:00 and 7:30,
28 and which also runs into other problems, where was he at
29 between 8:00 and 10:00 when the killing was supposed to have

1 occurred because it is only two blocks away? It throws the
2 whole time sequence off. And if she is right about the time,
3 then she may very well be wrong about the day because we
4 don't have any receipt to back her up.

5 But it's not even important to us whether she is
6 wrong or right about going down to Tardy's on that day.
7 Actually I would think she would remember that. And the
8 reason I would think she would remember when, if she is
9 telling the truth, which may or may not be true, but I would
10 think that if I turned my car in into a place right behind,
11 right behind a place that I heard an hour later had been
12 robbed and people had gotten killed, I would remember I just
13 turned my car in. But remember, she doesn't know that Curtis
14 Flowers at that time is supposed to be anywhere involved.
15 She doesn't make a statement until 2-97. She hasn't any
16 reason to be remembering whether she saw Curtis Flowers that
17 day. Because you remember you turned your car in that day,
18 that doesn't mean that you are accurate about remembering
19 that you saw Curtis Flowers. The two things don't
20 necessarily go together.

21 I go to a lot of important basketball games that
22 I think are important, baseball games. I can't tell you
23 everybody I saw going to that game and coming back from that
24 game. I have been in a lot of important trials. I can't
25 tell you the people I saw coming in and out of the
26 courtroom. I have had situations where I have stood before
27 juries and just traumatic situations. I can't tell you who I
28 saw on those days. I have witnessed things before, tragic
29 things. I can't tell you who I saw before and after. Now

1 you use your own common sense.

2 So we also would say as to Mr. Collins is that he
3 seems to be very, his memory is very good when it came to Ms.
4 Rigby, what she had on, what she did, where she went. But
5 his memory seems to be very bad when it comes to remembering
6 what exactly he did and even to some extent the men turning
7 north and all that kind of stuff. I don't know what that
8 means. I don't know what that means, but you know, I don't
9 know if that means that he really didn't see as much as they
10 thought he saw or what. But see, so although he says he has
11 memory problems sometimes when he takes medication or when he
12 doesn't take it, that was a question. It was a little
13 interesting that he remembered things about Ms. Rigby so
14 clearly, and I assume those things that he remembered are
15 correct. I mean there is no way for us to really know, but I
16 assume they are correct. But he didn't remember other stuff
17 as well, and you saw it because of the way his testimony
18 varied from statement to transcript to here.

19 Excuse me one second. Judge, how much time?

20 **BY THE COURT:** You have got 10 minutes.

21 (Pause while Mr. Lumumba confers with Mr.
22 Freelon.)

23 BY MR. LUMUMBA:

24 Okay, one of the instructions that you have been
25 read is Instruction number 10. This is an instruction which
26 tells you how to evaluate identification testimony. You
27 know, it talks about it. It says, "Did the witness have an
28 adequate opportunity to observe the" alleged "offender?" Now
29 in this case we really aren't even talking about an

1 offender. We are talking about circumstantial evidence where
2 they believe the person that these witnesses saw had
3 something to do with the crime. None of these witnesses saw
4 a crime.

5 But as far as if the witness had adequate
6 opportunity to observe, then a split second glance is not an
7 adequate opportunity. I don't care what the people are
8 doing. Plus you are looking at several different things at
9 the same time. You are looking at hand gestures; you are
10 looking at a car; you are trying to check out what you think
11 is an argument. You pull all the way back around and you see
12 nothing. You just see walking toward a building doing
13 innocent activity, walking toward Coast to Coast area. But
14 that is not an adequate opportunity to observe. He saw the
15 back of the man's head more than he saw anything else.

16 The other thing is even with Katherine Snow, there
17 was nothing that the person was doing unusual. She just saw
18 him; she just glanced at him, just kept on going, and there
19 was nothing else done, saw somebody leaning against the car
20 that is 5 foot 6 at one time, 5 foot 10 at another time.
21 According to Simpson, gave him one clothing description;
22 according to her, she never gave that clothing description,
23 and it wasn't until much, much, much later that she concluded
24 that this was Curtis, Curtis Flowers. Yet she already knew
25 Curtis Flowers. So if the man was Curtis Flowers, she would
26 have concluded it a lot earlier, and if she did conclude it
27 earlier like she said, then there would have been no reason
28 why she wouldn't have told somebody.

29 "Did the witnesses observe the offender with an

1 adequate degree of attention?" Why would Katherine Snow be
2 paying a whole lot of attention to the person? She didn't--
3 that is probably one of the reasons she really doesn't know
4 what kind of clothes the person had on. In fact, none of
5 these people were paying a great deal of attention to the
6 date and the time. As far as the people who know Mr.
7 Simpson-- Mr. Flowers, people who know Mr. Flowers, we have
8 never questioned whether they knew Mr. Flowers or whether
9 they can identify Mr. Flowers. But nobody who acknowledged
10 knowing Mr. Flowers came up with any immediate statements
11 about Mr. Flowers.

12 And I may be a little bit out of time. In other
13 words, the quickest person that said anything about him that
14 knew him was Ms. Hollman, and that was over a week or two
15 weeks later. The thing happened on the 16th. They interview
16 her on August the 7th, and he is supposed to have some Filas
17 on. On the day of the incident there is only two people that
18 they are talking to that is supposed to have seen the person
19 that they think might be involved, and none of them say it's
20 Mr. Flowers. The other people, they are eight or nine months
21 later. Mr. BoJack, two or three months-- well, in September
22 and this happened in July. Christian, I think he was
23 interviewed sometime about August the 15th. So all of these
24 people are much later at a time that they can forget.

25 And we are not saying that they didn't know who Mr.
26 Flowers is, and we are not saying that they have never seen
27 Mr. Flowers walk down there. We are just saying that they
28 all have got different clothes on. It is obvious that he
29 walked down there on different days.

1 "Did the witness provide an accurate description
2 of the offender after the crime?" Mr. Collins' description
3 was two medium skinned black men. That is not a good
4 description of Mr. Flowers. Mr. Flowers is not a medium
5 skinned black man. Mr. Flowers is a dark skinned black man.
6 That is not to say that there are not black people who are
7 darker, but very few people would look at Mr. Flowers and
8 call him a medium skinned black man. And he did not, and I
9 don't know if he was talking about he was Mr. Hargrove's
10 complexion. Mr. Hargrove is even a wee bit darker than Mr.
11 Flowers. There is no way he is medium skinned.

12 "How certain is the witness of the
13 identification?" I think it is him. I believe it is him. I
14 will always believe it's him. I mean not, I'm positive
15 that's the man.

16 "How much time passed between the crime and the"
17 -- and this is the most important thing for both
18 identifications here. "How much time passed between the
19 crime and the identification?" Eye witness identification is
20 not always what it is cracked up to be, and the reason of
21 that is the reasons that is listed here and because of what
22 happens when time passes and what happens with the memory.
23 We have to focus on three different things about the witness
24 identification specifically. A), the observation or the
25 perception at the time that the incident occurred. In other
26 words, what did you see? What was affecting what you see?
27 Is there any real reason why you should even remember what
28 you saw? Because if it's just an ordinary every day event,
29 there is no real reason for it to be stuck in your memory.

1 Number two, how much time passes? If time passes,
2 you can confuse it with other days. You can confuse it with
3 other people. It's easy to get confused. We all make
4 mistaken identifications every day.

5 And finally the question is what happens, if
6 anything, to influence your identification? If the name
7 Curtis Flowers is floating around in the air as a suspect in
8 this case, that might consciously or subconsciously influence
9 who you point out, and if you are confronted with a big head
10 man and everybody else in the pictures are different kinds,
11 that will influence your identification.

12 And then there is one other thing I have to
13 mention. I don't know Mr. Johnson, and you don't either. He
14 works in law enforcement, and that is good because we need
15 people to work in law enforcement. Mr. Roy Harris said that
16 Mr. Johnson showed him one picture. Remember this; there are
17 no lawyers or anything else around to really say what happens
18 at the scene of these identifications. And it just seems a
19 bit strange to me that a person could come up a month later
20 and identify somebody from a split second glance and then
21 identify two or three others.

22 But in any event, even though those other
23 identifications weren't quote, unquote tarnished, "How much
24 time passed between the crime" or the incident "and the
25 identification?" In this case they weren't looking at
26 crimes. Now the crime happens. That is an exciting event
27 and maybe especially people who are trained, law enforcement
28 people and other people, they will begin to focus in on
29 certain things that they can remember. But there was no

1 reason for anybody to focus in on anybody in these incidents
2 because nothing was happening. A person leaning on a car
3 allegedly; a person walking toward Coast to Coast? And
4 because they seem to be arguing and gesturing, that's no
5 reason to remember who we saw.

6 And we wanted to remind you to keep it in mind;
7 look at this map if you need to and look at these different
8 identifications, different descriptions, but remember and you
9 can put reasonable in here. We don't have a problem with
10 that. You have to eliminate every reasonable theory or
11 hypothesis consistent with innocence because this is what you
12 call a circumstantial case. There is no direct evidence.
13 Nobody saw anybody do anything. So for that reason, we have
14 to eliminate any possible interpretation of those
15 circumstances which are consistent with innocence.

16 And when you think about that, and that is every
17 situation you get into. When you are trying to think about
18 the so-called residue, are there circumstances consistent
19 with innocence? Shaking the police officers' hands who
20 went to pick him up, being in the police place in the first
21 place where they have residue probably, living in a family
22 that uses guns and shoots guns and even being with people
23 that are shooting guns that weekend. And I know they are
24 going to come back and say that the man says sometimes .22
25 rifles or .22 guns don't leave residue. That is true, but
26 sometimes they do. And if at any time that comes up, the
27 doubt must be resolved in favor of Mr. Flowers, and we ask
28 that you that.

29 We are finally going to ask as we started at the

1 beginning that we make a conscientious effort not to let any
2 kind of bias affect us, and we have to say this in all
3 criminal cases because a criminal defendant automatically
4 attaches bias to him because he is charged with a crime. And
5 certainly we don't want any other kind of bias. We don't
6 want that and we ask you, we just want justice. And if we
7 get justice, then I'm sure that you will have no problem
8 meeting our request to bring back a not guilty verdict of
9 Curtis Flowers.

10 Now let me say this, and then I'm going to sit
11 down. I am a student of history. And contrary to what many
12 people think, actually the whole reasonable doubt thing,
13 presumption of innocence, at least the concept, not
14 necessarily the words, actually start back a long time ago.

15 There was this king once. The king's name was
16 Piankis, and I say this because maybe this will help you.
17 This is a little analogy that may help guide you in what your
18 task is here today. Piankis they say in books was confronted
19 with a powerful kingdom, confronted with the circumstance
20 where he was the judge. One of his subjects had been slain,
21 stabbed to death. Another one was accused of it. It appears
22 that the person who was stabbed was in the tent, and it
23 appeared at least the only person in the tent with him was
24 the person who was accused. Piankis looked at the case. To
25 make a long story short, he looked at it and then came back
26 with a judgment that says the man should go his way, which
27 meant that he was not guilty in our terminologies. People
28 were at first amazed. Later on it turned out that what
29 happened is that they were able to discover that someone had

1 snuck into the rear of the tent and stabbed the man and
2 escaped, and that was the only reason that this gentleman who
3 was in there was in there with the man. And so they were
4 able to say-- and so all the subjects then, Piankis, you are
5 just great. You are just so wise. He didn't know that this
6 other person had been in the tent at the time. You are so
7 wise. You are so great. You are so brilliant. You must
8 read minds. You must be divine. God must have made you
9 divine.

10 You must read minds, and Piankis said no. There is
11 but one guy, and secondly, I don't read minds. He says
12 nobody reads minds, and if I have wisdom, it is wisdom that
13 shows me that nobody reads minds.

14 So when I look at a person who I do not know, I
15 understand that I don't read his mind. If I look at Clemmie
16 Fleming and several people come in here and say she is lying,
17 and I look at her story and her story sounds unlikely to
18 start off with, I don't read minds. I don't read the minds
19 of the people that say that she is lying, and I don't read
20 her mind. And I am wise enough to know that I don't read
21 minds.

22 So what I do is read facts and circumstances, and
23 if the circumstances and the facts are unclear; if everybody
24 gives them a different dress of clothing on the same routes
25 to the same alleged crime; if the print doesn't necessarily
26 even match the shoes that come out of that box because we
27 don't know what comes out of that box; and there is some
28 question about whether the box was ever even touched by him
29 to start off with; if 660,000 people could leave a print and

1 these are open cities to Winona; if residue can accumulate
2 from any number of ways; and if the DNA people say that what
3 is on his clothes is not the victim's blood or sweat or
4 anything else; if the fingerprints experts say no, I can't
5 find his prints; then I know I don't read minds.

6 And regardless of what I might think, what I might
7 want to think, the question is Piankis said, I follow the
8 rules. I thought like everybody else did. I thought the man
9 was guilty, but I followed the rules. The rules say if it's
10 not proven, convincing and with certainty -- that was their
11 rule. Our rule is a little different, and we will come to
12 that. Not to prove with certainty, then we don't read
13 minds. We say you go your way.

14 Our rule is that it has to be proven beyond a
15 reasonable doubt, and don't let anybody make reason cheap to
16 you. Don't make reason any different than reason would be
17 anywhere else in your life. If you wouldn't buy a house from
18 Clemmie Fleming with the story that she tells, then don't
19 come in here and buy her story here.

20 **BY THE COURT:** That is time, Mr. Lumumba.

21 BY MR. LUMUMBA: We would ask you to return a
22 not guilty verdict for Mr. Curtis Flowers. Thank you.

23 **BY THE COURT:** Mr. Evans, you have 30 minutes
24 left.

25 BY MR. EVANS: Yes, sir.

26 FINAL ARGUMENT BY MR. EVANS:

27 Ladies and gentlemen, y'all will be glad to know
28 that I'm going to be brief. Y'all are just about through.
29 What Mr. Lumumba has just done is what I call the shotgun

1 approach. He just tries to shoot out there and shoot down
2 every piece of evidence we have got, but it doesn't work.
3 I'm going to briefly go back through some of the stuff, and
4 I'm going to point out the highlights of this case.

5 To start with, I want to say that I think this was
6 a great piece of law enforcement work. The officers followed
7 up on the case. They checked into all the evidence. They
8 started at the scene. They found evidence at the scene. One
9 thing that I think is very important is this shoe track. You
10 have heard the expert testify that he took a copy of this.
11 He held it up to the shoe, and it matched. Why is that
12 important?

13 BY MR. LUMUMBA: Judge, objection. He said it
14 was consistent with. He didn't say it was a
15 match.

16 BY MR. EVANS: He said it matched this shoe.

17 BY MR. LUMUMBA: He said he couldn't say
18 whether it--

19 BY THE COURT: --The jury has heard the
20 evidence. It's up to them to evaluate.

21 BY MR. EVANS:

22 Why is that important? It's important because we
23 put Curtis Flowers at the scene. Where is that shoe? Where
24 did he come in and say, Here is my shoes. Here is my shoes.
25 Check them and see if it's the shoe. We don't have that
26 shoe. Why don't we have the shoe? Because he knew it had
27 blood on it, and he got rid of it just like he did some of
28 his clothes. He got rid of it. He got rid of it when he
29 went back to his house. But we know that a shoe consistent

1 with that one was in that store. We know that that person
2 was the one that killed him because he stepped in the blood.
3 That was the first mistake that he made.

4 The second mistake that he made was not washing his
5 hands good enough because he got gunshot residue on the back
6 of his hand where he fired the gun. You heard the officers
7 testify. They took, they knew they were going to take that
8 gunshot residue test kit. They made sure that they did not
9 contaminate his hands because they wanted to make sure it was
10 a good test, and they got that.

11 Now they want to come up with this shotgun approach
12 and say well, he shot .22's. Y'all heard the expert. The
13 expert said this kind of primer is not in a .22. That was a
14 mistake that--

15 BY MR. LUMUMBA: --Judge, objection. He did
16 not say that.

17 BY MR. EVANS: Yes, sir. He did.

18 BY MR. LUMUMBA: He said some .22's.

19 BY MR. EVANS: Yes, sir. He did.

20 BY THE COURT: That is within the evidence.

21 You can argue it.

22 BY MR. EVANS:

23 All of that is important, but then what else have
24 we got? We have got numerous witnesses, not witnesses that
25 just voluntarily came in, but witnesses that these officers
26 went door to door talking to. The only one that came in that
27 particular day was Mr. Collins. He said, I saw them. I got
28 a good look at one of them. They looked like they were
29 arguing. That's why I looked at it. That's why it got my

1 attention. That's why I can identify him. He identified him
2 in the photo lineup, testified he identified him at a
3 previous hearing, and he identified him here. He said, It
4 looks like him. I think it's him. That's him. That is him
5 that was in front of the store.

6 Yet he says in one of his many lies in his
7 statements that he was never anywhere on that side of Highway
8 51. He doesn't want to admit that he was over there in front
9 of that store, and what have we got to back up Mr. Collins?
10 Just to make sure, 100 percent that he is right about who he
11 saw. Clemmie Fleming that has known him all of her life sees
12 him running away from the store, running away from the store
13 when he says I wasn't anywhere on that side of the highway.
14 Another lie.

15 We have got, and I'm not going to sit here and go
16 through it. We have gone through this thing with y'all so
17 many times it's pitiful. We were able to plot out through
18 witnesses that he left his house. He went down by Angelica.
19 He got the gun. How do we know he got the gun? Doyle said
20 he knew the gun was in the car.

21 BY MR. LUMUMBA: --Objection. Doyle did not
22 say--

23 BY MR. EVANS: --Katherine-- may I finish,
24 Your Honor?

25 BY MR. LUMUMBA: --his gun was in the car.
26 That is a blatant misstatement of facts. Doyle
27 never made that statement.

28 BY THE COURT: Yes, you may. Go ahead.
29 Objection overruled.

1 BY MR. EVANS:

2 Katherine Snow saw him leaning up against the car
3 that the gun was stolen out of just a matter of a short
4 period of time before he killed the people. And how do we
5 know that that is the murder weapon? That is some more very
6 good police work. These officers didn't just say well, it
7 could have been the gun. They asked Doyle, have you shot
8 this gun? Where have you shot it? He carried them. They
9 dug the bullets out of the post. They carried them to an
10 expert. The expert looked at the bullets and said yes.
11 These bullets came out of the same gun that killed these
12 people. They matched them positively, not possibly,
13 positively. We know that that gun that was stolen out of the
14 car that morning that Curtis Flowers was leaning against is
15 the murder weapon. And how do we know that he is on that
16 side of the highway? Because they testify he is. Mr.
17 Kennedy sees him. He was seen walking to Angelica. He was
18 seen leaning against the car. He was seen walking in the
19 direction away from Angelica when Mr. McChristian saw him,
20 and apparently what he did, he went back home. That's when
21 Patricia saw him come back.

22 And then we have got the trail where he goes back
23 to the store where he goes down there to kill the people. We
24 have got Mary Jeanette Fleming that saw him there. She saw
25 him and spoke to him. That I think is very important. Most
26 of these eye witnesses that saw him at these locations, they
27 know him. They don't have to say well, I saw somebody that
28 looked like him or I may have seen him. They said I know
29 him. We saw him.

1 All of these things together are what you look at.
2 Our jury system is made up out of the principle that we put
3 twelve people in the box that can use their good common
4 sense. They look at the evidence, and they determine what
5 happened. You don't leave your common sense at home because
6 you are on the jury. You use it. You determine, as the
7 Judge told you and as we told you during opening statements
8 and voir dire, you listen to the evidence. You determine who
9 is believable and who is not. You have heard testimony how
10 the defense witnesses tried to get our witnesses to lie, to
11 come into court and change their story and say that he was
12 not the person. You have seen that happen in this courtroom
13 before your very eyes.

14 Curtis Flowers was mad. You notice in your
15 statement when Jack Matthews read it at least four or five
16 different times in there. He talked about how he had been
17 terminated, how he had been let go. You heard one of his
18 witnesses, Mr. Campbell, testified that he was not
19 responsible for the batteries. That's what he was saying.
20 He was mad because this money--

21 BY MR. LUMUMBA: --Judge, objection--

22 BY MR. EVANS: --was going to be held out--

23 BY MR. LUMUMBA: --Mr. Campbell specifically
24 said he wasn't--

25 BY MR. EVANS: --He was mad because--

26 BY MR. LUMUMBA: --Excuse me--

27 BY MR. EVANS: --because he--

28 BY MR. LUMUMBA: --Excuse me--

29 BY MR. EVANS: --was going to not pay the

1 money.

2 BY THE COURT: Wait a minute. Y'all can't
3 talk at the same time.

4 BY MR. LUMUMBA: Excuse me. Mr. Campbell
5 specifically said he was not upset. I mean I don't
6 think you can just mischaracterize the evidence.

7 BY MR. EVANS: Your Honor, I am quoting
8 exactly what I wrote down.

9 BY THE COURT: The objection is overruled.

10 BY MR. EVANS: Thank you, Your Honor. Is this
11 going to come off of my time, all these
12 objections?

13 BY THE COURT: No, sir.

14 BY MR. EVANS:

15 Mr. Campbell said that Curtis told him that he was
16 not responsible for the batteries. Again, this is part of
17 the whole theory. This is part of what was going on. He was
18 mad. He was going to go down there. He was going to take
19 that gun, and he was going to get some money by any means
20 that he saw fit. And why did he kill everybody in the
21 store? That is very simple. He wasn't going to leave any
22 witnesses. He was going to kill everybody that was in there
23 and he did. He shot every one of them in the head. This is
24 a very brutal case. This is a case where BoBo Stewart was
25 shot in the head. That is the case that y'all are hearing.
26 There was no reason to kill that boy. That boy hadn't done
27 anything to him, but the case of greed because he wanted to
28 go down there and get something that didn't belong to him.
29 He went down there. He used a gun. He robbed the store, and

1 he took the money.

2 Now the Defense even wanted to argue well, you
3 can't even prove he took the money. Clearly you can. That
4 is how you prove an armed robbery. You prove what was in the
5 store, and you prove it's missing after he left after killing
6 them. That is very simple. That is common sense. You use
7 your common sense.

8 They want to say that we can't prove that he had
9 Fila tennis shoes. Not only did Patricia Hollman testify
10 that she knew him; she lived next door. She was the
11 godmother of one of Connie's children. She said, I know what
12 kind of tennis shoes he wore. He wore Fila Grant Hills.
13 Both of my kids wanted them. We talked about them. He wore
14 Fila Grant Hills. And what was very important on that, one
15 of their witnesses, Mary Sue Moore, she told two
16 investigators that Curtis wore Fila tennis shoes, and she
17 hadn't seen him wearing them since the murders. Well, I
18 wonder why. It's because he threw them away.

19 He got rid of that part of the evidence, but he
20 couldn't get rid of the witnesses. They tried to force them
21 to lie. They put pressure on them. That wouldn't work.
22 These witnesses told the truth. These witnesses weren't up
23 here for money. These witnesses were up here because a
24 brutal murder occurred in Winona, Mississippi, and they were
25 telling what they knew. They didn't necessarily want to be
26 here. They would have probably rather stayed in Winona, but
27 they told what they knew. They told the truth so that y'all
28 could make the decision, so that y'all would not let a
29 murderer go. They told what they knew about what happened.

1 BY MR. LUMUMBA: Judge, objection. And I will
2 argue it later. I think that is prosecutorial
3 misconduct.

4 **BY THE COURT:** Okay. Objection overruled.
5 BY MR. EVANS:

6 Even Tina Allen, another one of their witnesses
7 that they wanted to put on as an alibi witness, where did she
8 put him? She put him up here close to the store after 10
9 o'clock which is also consistent with exactly what happened.
10 He went, he was seen running up by the store by Clemmie
11 Fleming and by Roy Harris.

12 Now Roy came in here and tried to change his
13 story. But the officer testified where he took them, where
14 he showed them. The officer testified what he told
15 originally. The officer testified, and he even admitted then
16 in the prior hearing that is exactly what he said under
17 oath. That is one witness that they did manage to get to
18 come in here and lie to you after all this time.

19 Even the other witnesses that they put on -- they
20 put on the sister. There's nothing inconsistent with him
21 being at the sister's house at the time that she said. The
22 only things that are in there is that he had to try to change
23 his stories and lie to try to make up some excuse. Not only
24 did he lie about not being on that side of the highway, he
25 lied about shooting the gun. He lied about having Fila
26 tennis shoes. He lied about basically everything that he
27 said in his statement. He lied about the times.

28 Now the same day something like this happened they
29 want to say well, you can be mistaken or you wouldn't know.

1 Would you not know the difference between getting up at 6:30
2 or 7 o'clock and 9:30? Would you not know the difference in
3 going to your sister's house at 9:30 or 12 o'clock? What he
4 did, he told his first version, and then he got messed up
5 because folks he wanted to use as an alibi witness didn't
6 cooperate, so he tried to change it around. Another lie.

7 Ladies and gentlemen, I'm not going to waste
8 y'all's time by going back through the rest of this because
9 y'all heard the evidence. Y'all know that he is guilty. The
10 evidence is clearly there, and I ask that you go back and you
11 return a verdict of, "We, the jury, find the Defendant
12 guilty," because he is guilty.

13 Thank you, Your Honor.

14 **BY THE COURT:** Ladies and gentlemen, that
15 concludes the evidence, the arguments and the
16 instructions. It is now time for you to retire and
17 deliberate on your verdict. And I think they have
18 got some food for you back there too. You will be
19 delivered the instructions of the Court and all of
20 the exhibits that have been admitted into this case
21 shortly. Everybody may go back there except Ms.
22 Kreeger and Ms. Anderson, if you would wait right
23 now. All right.

24 JURY RETIRES TO CONSIDER VERDICT AT 1:48 P.M.

25 **BY THE COURT:** Let the record reflect that the
26 Court has discharged the two alternates, Ms.
27 Kreeger and Ms. Anderson.

28 **BY MR. LUMUMBA:** Judge, can I place a couple
29 of things on the record, just short?

1 **BY THE COURT:** You can in just a minute. I
2 will be right back.

3 (The Court's Instructions and the Exhibits
4 that had been admitted into evidence were taken to
5 the jury room by the bailiff. Upon the Court
6 returning into the courtroom, there was the
7 following with the JURY OUT:)

8 BY MR. LUMUMBA: Judge, just briefly, for the
9 record we do make a Motion for a Mistrial based
10 upon what we think is prosecutorial misconduct.
11 The prosecutor told the jury that they would have
12 to bring a guilty verdict back or words to that
13 effect. They can't let this murderer go free. I
14 think that is the kind of inflammatory language
15 which the courts discourage and which preclude in
16 terms of prosecutorial misconduct. He also on
17 several occasions, Judge, blatantly misstated the
18 evidence. I understand sometimes we might not
19 remember things, but I can't believe that-- there
20 is one thing with arguing that an interpretation of
21 what Campbell said is that Mr. Flowers was mad.
22 There is another thing to say that Mr. Campbell
23 said he was mad when Mr. Campbell clearly said he
24 wasn't, and there were several other instances.
25 And every time I objected and plus some times when
26 I didn't object, that was true, and for those
27 reasons we make a Motion for a Mistrial.

28 **BY THE COURT:** That Motion is overruled. Let
29 me see the exhibits now.

1 BY MR. EVANS: Are we in recess at this time,
2 Your Honor?

3 BY THE COURT: Yeah. I am going to send the
4 projector with the slides.

5 BY MR. EVANS: There are some other things on
6 that cart that need to come off.

7 BY THE COURT: There are no slides in that
8 projector that have not been admitted, are there?

9 BY MR. EVANS: No, sir.

10 (Slide projector on cart was rolled to the
11 jury room by the bailiff.)

12 BY THE COURT: The Court Reporter is going to
13 make a record of the items that were not submitted,
14 that were marked for identification and have not
15 been submitted to the jury.

16 BY MR. EVANS: You don't need us for that, do
17 you?

18 BY THE COURT: No. All right, let the record
19 reflect that the following exhibits were marked for
20 identification but were not introduced into
21 evidence and have not been submitted to the jury:
22 S-4A, S-5, S-5A, S-28, S-28A, S-32, S-32A, S-33,
23 S-33A, S-34, S-34A, S-44A through S-60, S-66, S-68,
24 S-98, S-104, S-106, S-108, and S-110. Then D-1,
25 D-3, D-4, D-8, D-10, D-13, D-14, D-16, D-17, D-20,
26 D-21. That's all I show.

27 (COURT WAS IN RECESS AWAITING VERDICT OF THE
28 JURY. UPON THE JURY'S KNOCK, COURT WAS CALLED TO
29 ORDER AT 3:33 P.M., AND WITH THE COURT, MR. EVANS,

1 MR. BLECK, MR. LUMUMBA, AND THE DEFENDANT PRESENT,
2 THERE WAS THE FOLLOWING:)

3 BY THE COURT: Okay, the jury has announced or
4 sent me a message that they have reached a verdict
5 in this case. I'm going to bring them in and let
6 them deliver this verdict right now. I will not
7 tolerate any displays of emotion one way or another
8 concerning this verdict at all. Once you are out
9 of the courthouse, you can do what you like, but
10 inside the courtroom and inside this courthouse you
11 must not create any disturbance at all. Anybody
12 that does that, the officers can take charge of
13 them and hold them until I can deal with them.
14 Okay.

15 JURY ENTERS THE COURTROOM AT 3:35 P.M.

16 BY THE COURT: Ladies and gentlemen, have you
17 reached a verdict?

18 BY JURY FOREPERSON, MS. LADNER: We have, Your
19 Honor.

20 BY THE COURT: Is it the verdict of all twelve
21 of you?

22 BY JUROR MS. LADNER: Yes, sir.

23 BY THE COURT: Okay. Hand the verdict to the
24 bailiff.

25 (Verdict is handed to the Court and then to
26 the Clerk.)

27 BY THE COURT: The Defendant will rise. Read
28 the verdict.

29 BY THE CLERK: We, the jury, find the

1 Defendant guilty of capital murder.

2 BY THE COURT: Okay. Do you want the jury
3 polled?

4 BY MR. LUMUMBA: Yes, sir.

5 BY THE COURT: All right. Sir, is this your
6 verdict?

7 BY A JUROR: Yes, sir.

8 BY THE COURT: Is it yours, ma'am?

9 BY A JUROR: Yes, sir.

10 BY THE COURT: Yours, sir?

11 BY A JUROR: Yes, sir.

12 BY THE COURT: Yours, ma'am?

13 BY A JUROR: Yes, sir.

14 BY THE COURT: Yours, ma'am?

15 BY A JUROR: Yes, sir.

16 BY THE COURT: Yours, ma'am?

17 BY A JUROR: Yes, sir.

18 BY THE COURT: Yours, sir?

19 BY A JUROR: Yes, sir.

20 BY THE COURT: Yours, ma'am?

21 BY A JUROR: Yes, sir.

22 BY THE COURT: Yours, ma'am?

23 BY A JUROR: Yes, sir.

24 BY THE COURT: Yours, ma'am?

25 BY A JUROR: Yes, sir.

26 BY THE COURT: Yours, sir?

27 BY A JUROR: Yes, sir.

28 BY THE COURT: Yours, ma'am?

29 BY A JUROR: Yes, sir.

1 **BY THE COURT:** All right. Ladies and
2 gentlemen, I will ask, I will have some further
3 instructions for you in just a few minutes. I'm
4 going to ask you to return to the jury room at this
5 time.

6 JURY LEAVES THE COURTROOM.

7 **BY THE COURT:** Where are we on the sentencing
8 phase?

9 BY MR. EVANS: Your Honor, I know we have got
10 a couple of witnesses that are on the way from
11 Winona. I'm not sure exactly what time they left,
12 but I can check if you can give me just a few
13 minutes.

14 **BY THE COURT:** Will y'all be ready to
15 proceed?

16 BY MR. LUMUMBA: I have to check.

17 **BY THE COURT:** Okay. Y'all check on that. If
18 you will, try to give me an idea in about 10
19 minutes. Okay.

20 BY MR. EVANS: Yes, sir.

21 **BY THE COURT:** Court will be in recess.

22 (FOLLOWING A RECESS, COURT WAS RECONVENED WITH
23 THE COURT, ALL COUNSEL PRESENT WITH THE EXCEPTION
24 OF MR. FREELON, AND WITH THE JURY OUT FOR THE
25 FOLLOWING:)

26 **BY THE COURT:** Let me ask you, are we going to
27 be ready to proceed?

28 BY MR. LUMUMBA: No, Judge. We have a witness
29 that I understand is in Winona, so we need him, so

1 we won't really be ready to proceed until tomorrow
2 morning.

3 **BY THE COURT:** Can you proceed with the
4 State's evidence at this time and let y'all put
5 yours on?

6 **BY MR. LUMUMBA:** We prefer not to. We prefer
7 time to prepare, and so we would prefer not to
8 proceed before tomorrow morning. That is our
9 position. And I need to talk-- can I talk to one
10 witness right here?

11 **BY THE COURT:** Uh-hum.

12 DEFENDANT ENTERS COURTROOM.

13 (Pause for Counsel to confer.)

14 **BY MR. LUMUMBA:** The other thing is, Judge, I
15 don't know that we agree with the instruction that
16 has been proposed. I have to look at it more
17 carefully.

18 **BY MR. HORAN:** That is not an instruction I
19 propose. All I wanted Mr. Lumumba to do is to
20 submit what mitigating circumstances he thought
21 that he would want to put under Section, I believe,
22 "B" of that particular instruction. I'm not
23 proposing that instruction as an instruction.

24 **BY MR. LUMUMBA:** Right. Well, and I will
25 certainly come up with whatever our mitigating
26 circumstances are. But that is our position on it,
27 Judge, that we don't want to proceed before
28 tomorrow morning.

29 **BY THE COURT:** My understanding is y'all have

1 some witnesses that aren't here too; is that
2 correct?

3 BY MR. EVANS: Yes, sir, but we are willing to
4 proceed without them if the Court would like to
5 continue.

6 BY THE COURT: Well, it's 4 o'clock in the
7 afternoon, and we have to go over instructions.
8 They are entitled to some mitigating factors, and I
9 want them to have ample time to go over that. And
10 so what I'm going to do is we will start the
11 sentencing phase at 9 o'clock in the morning. And
12 I would like the attorneys to be here again at 8:00
13 so we can have the sentencing instructions done at
14 the time the jury gets here. Okay?

15 BY MR. LUMUMBA: Okay.

16 BY THE COURT: Okay.

17 BY MR. LUMUMBA: Judge, I do want to make a
18 note for the record is that the juror we challenged
19 for cause because she said in her questionnaire
20 that she could tolerate interracial marriages, but
21 she didn't condone them and the juror we tried with
22 very difficulty to get excluded for cause is the
23 one who wound up being the jury foreman. That is
24 Ms. Tanner [sic], and I think she is in seat number
25 two.

26 BY THE COURT: Okay. Bring the jury in and
27 let me make that announcement.

28 (JURY ENTERS THE COURTROOM AT 4:00 P.M.)

29 BY THE COURT: Ladies and gentlemen, as we

1 stated at the first of the trial, there are two
2 phases to this trial. There is the guilt phase
3 which we have now, we are past that point, and we
4 are to the sentencing phase which will require some
5 other testimony. There are some witnesses who are
6 en route who have not made it here. We are going
7 to be unable to finish that today, but we are going
8 to start early in the morning at 9 o'clock, and I
9 feel like we will make very good progress tomorrow
10 on getting through, but I don't believe we can do
11 it in any kind of reasonable time today. So I'm
12 going to discharge you for the day, and we will
13 start back promptly at 9 o'clock and get on with
14 finishing up this trial tomorrow. Okay.

15 JURY LEAVES THE COURTROOM.

16 **BY THE COURT:** Court is adjourned until in the
17 morning at 8 o'clock.

18
19 COURT WAS ADJOURNED ON MARCH 30, 1999.
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Consideration of Sentencing Instructions

1 (COURT WAS CONVENED AT 8:07 A.M. ON MARCH 31,
2 1999, FOR THE CONSIDERATION OF JURY INSTRUCTIONS ON THE
3 SENTENCING PHASE. PRESENT WERE THE COURT, ALL COUNSEL, AND
4 THE DEFENDANT. THE JURY WAS OUT.)

5 SENTENCING INSTRUCTION NO. 1: **BY THE COURT:** Okay, my
6 understanding is that they have the statutory sentencing
7 instruction--

8 BY MR. EVANS: Yes, sir.

9 **BY THE COURT:** --ready from their standpoint
10 except for the mitigating factors, so I guess that's what we
11 need to talk about now.

12 BY MR. LUMUMBA: Are you talking about the
13 instruction I got from them yesterday? Is that what we are
14 talking about?

15 **BY THE COURT:** It's the long one.

16 BY MR. EVANS: Right, the long instruction.

17 BY MR. LUMUMBA: Well, we object to it, but if
18 the Court is going to use it, we do want whether Mr.
19 Flowers-- and we don't want "Defendant." We want the term
20 "Mr. Flowers" in there. Whether Mr. Flowers has no
21 significant history of prior criminal activity - that would
22 be the first one. I have a couple of others.

23 BY MR. EVANS: Your Honor, in response to
24 that, I think there is some specific case law that says if
25 they want to go into that, then we would be entitled to show
26 that he has been convicted already of another capital
27 murder. We will show you the case law on it in just a
28 second.

29 BY MR. LUMUMBA: My argument would be that

1 that case law relates to a conviction that occurred for an
2 event that had to take place prior to. It would clearly be,
3 it would clearly be a violation of the 14th Amendment to
4 allow a defendant, to allow a conviction which occurs for an
5 event that occurred at the same time as this to be used
6 against this Defendant in this particular case whereas every
7 other defendant in the world, regardless of whether he is
8 convicted 29 times afterwards, as long as his conviction is
9 not available at the day of trial, then they would not be
10 able to use it.

11 So in other words, it is clearly a violation
12 because he is in the exact same footing, as far as this case
13 is concerned, as a person who has never been convicted, any
14 other person who has never been convicted prior to the time
15 of the event that they are being tried for now, irrespective
16 of whether they are convicted of something else at another
17 time. So I am just saying that I don't think it's any law
18 that they are going to be able to show you that they can use
19 a conviction which occurred for something that is supposed to
20 have happened simultaneous to this crime.

21 BY MR. EVANS: Of course, I think this Court
22 is familiar with Bell v. State that happened in Grenada
23 County. In that particular case the prior conviction that we
24 used was a conviction of a killing that happened after the
25 time of the murder we were trying. The Supreme Court said
26 that is proper under the law. In that particular case--

27 BY THE COURT: --Well, let me ask you, do you
28 have a case where it happened, where let's say like this case
29 and like Simon, where he has been tried more than once for

1 basically the same crime--

2 BY MR. EVANS: I'm not sure.

3 BY THE COURT: --and the other one has been
4 used?

5 BY MR. EVANS: If you will give me just a
6 minute, I will see if there is one for the same--

7 BY MR. HORAN: --Your Honor, did you look at
8 Simon?

9 BY THE COURT: I must have read Simon fifty
10 times, but I have not read it in the last week.

11 BY MR. HORAN: I can't remember if his Jones
12 County conviction was -- I don't think that was raised on
13 appeal, and I'm sure it would have been if his Jones County
14 conviction was used in DeSoto County. I meant to look it up
15 last night.

16 BY THE COURT: Well, let me resolve this
17 problem real quick.

18 BY MR. EVANS: My objection is we did not
19 anticipate using it. We don't want to use it. I would
20 rather stay away from it. But I think if they are going to
21 open it by saying he has no prior significant history, then I
22 think we have got to use it because that would be misleading
23 to the jury because he definitely does.

24 BY THE COURT: Well, he has no prior
25 significant criminal history prior to this case, and that's
26 what concerns me about it. And I acknowledge you may be
27 right. That may be the correct statement of the law, but I
28 think it is, because it happens in the same case or the same
29 set of facts, the whole thing, that I think its prejudicial

1 effect far outweighs the right of the State to put it on, and
2 the fact-- if it was another crime at another time, even like
3 Bell afterward, I would let it in. But I'm going to disallow
4 it. Now having passed that threshold--

5 BY MR. LUMUMBA: We will also use-- the only
6 other one we want to use, which is not a statutory
7 circumstance, is that the Defendant's, the Defendant's
8 involvement in religion and spirituality to the benefit of
9 himself and others.

10 BY THE COURT: Okay, do you want to, do you
11 mind writing that out how you want it?

12 BY MR. LUMUMBA: Okay.

13 (Off the record while Mr. Lumumba writes.)

14 BY MR. LUMUMBA: Okay, finally, Judge, here it
15 is.

16 (Mr. Lumumba hands document to the Court.)

17 BY MR. LUMUMBA: I don't know if you can read
18 it.

19 BY THE COURT: You were right.

20 BY MR. LUMUMBA: You can't read it?

21 BY THE COURT: Yeah. What I--

22 BY MR. LUMUMBA: Do you want me to type it
23 up?

24 BY THE COURT: Yeah, you need to type it up
25 how you need it to go in the instruction so we can put it in
26 there.

27 BY MR. LUMUMBA: We don't have the computer
28 here.

29 BY THE COURT: Or you can just write it out.

1 They have got a computer over there. They can add it to the
2 instruction if y'all just write it exactly the way you want
3 it.

4 BY MR. LUMUMBA: Okay, we will let Mr. Freelon
5 write. And the final one is already written in here. It
6 says, "Any other matter, any other aspect of Mr. Flowers" -
7 change that to Mr. Flowers' - "character or record and any
8 other circumstance of the offense brought to you during the
9 trial of this cause which you, the jury, deemed to be
10 mitigating on behalf of Mr. Flowers."

11 BY THE COURT: Okay. You are obviously
12 entitled to that, and I will grant the one on religion. So I
13 will grant those three.

14 BY MR. LUMUMBA: I am-- the last one which I
15 just read to you, I am redacting that to exclude, I'm going
16 to just put, "Any other matter, any other aspect of Mr.
17 Flowers' character or record brought to you during the trial
18 of this cause which you, the jury, deemed to be mitigating."
19 I'm going to exclude "any other aspect of the offense." I'm
20 not going to use that. I am just going to deal with the
21 character or record. Okay, so that is how we are going to
22 proceed now with this statutory instruction. Who is going to
23 put that together?

24 BY MR. EVANS: We are.

25 BY THE COURT: They have it in their
26 computer. I have got it in mine, but they have got the facts
27 in theirs.

28 BY MR. LUMUMBA: Okay.

29 BY THE COURT: And I have no problem with in

1 lieu of "Defendant" that we refer to him by his given name.

2 BY MR. LUMUMBA: I do--

3 BY THE COURT: --I don't think that makes any
4 difference at all legally, and it's sure not going to make
5 any difference to the jury one way or another. They are
6 going to know who it is.

7 BY MR. LUMUMBA: Okay, right.

8 SENTENCING INSTRUCTION NO. C-4: BY MR. LUMUMBA: Do you
9 have our proposed sentencing instruction? Is that the only
10 other one proposed?

11 BY THE COURT: No. I'm going to give-- let me
12 read it to you. I will give you a copy of it in a minute.
13 "The Court instructs the jury that it must be emphasized
14 that the procedure that you must follow is not a mere
15 counting process of a certain number of aggravating
16 circumstances versus the number of mitigating circumstances.
17 Rather, you must apply your reasoned judgment as to whether
18 this situation calls for life imprisonment." I think it will
19 be "life imprisonment without parole or whether it requires
20 the imposition of death, in light of the totality of the
21 circumstances present."

22 INSTRUCTION NO. C-5: BY THE COURT: Then I'm going to
23 give this one. "The Court instructs that you, as individual
24 jurors, must consider mitigating circumstances. Therefore,
25 even if all other eleven jurors find that a certain
26 mitigating circumstance does not exist, if you believe it
27 does exist, you must find that mitigating circumstance, and
28 weigh it in your further deliberations." Okay?

29 BY MR. LUMUMBA: Yes. We have no problem with

1 that.

2 (Instruction No. C-4 was given as Sentencing
3 Instruction 4, and Instruction No. C-5 was given as
4 Sentencing Instruction 5.)

5 INSTRUCTION NO. DS-1: **BY THE COURT:** Do you have a
6 problem with this?

7 BY MR. EVANS: What is that?

8 **BY THE COURT:** DS-1.

9 BY MR. HORAN: Yes, sir.

10 **BY THE COURT:** Okay, what is it?

11 BY MR. HORAN: I don't think you need to tell
12 them again what they are to do, consider the sentencing
13 instruction in number one. It's not necessary.

14 BY MR. LUMUMBA: My belief on that is
15 Sentencing Instruction Number 1 may not be altogether clear.
16 They may decide that if they jump all those hurdles and get
17 to the point where they can consider the death penalty, then
18 it is a must that they give it. So I think that this clearly
19 is a correct statement of the law.

20 **BY THE COURT:** All right, but didn't I just
21 say that in that last instruction where I told them to
22 consider the mitigating factors, and if eleven of them
23 decided they were and one decided they wasn't?

24 BY MR. LUMUMBA: Uh-uh. You said that as to
25 mitigating factors, and I appreciate that because this
26 doesn't say as to mitigating factors, but I guess this really
27 focuses more on the very end of the process. Let's say that
28 the mitigating factors do not outweigh the aggravating; then
29 even then they are not required to give the death penalty,

1 and that's what this focuses on, unless it's in their
2 individual determination that it's warranted.

3 **BY THE COURT:** Wait a minute. Say that again.

4 **BY MR. LUMUMBA:** Unless it's in their
5 individual determination that it's warranted. Even after
6 they determine that the mitigating circumstances do not
7 outweigh the aggravating circumstances, then they can
8 consider the death penalty, and according to your
9 instruction, they are supposed to. Okay, and I already
10 pointed to Sentencing Instruction Number 1 and said they had
11 to follow that. But then at that point they are still not
12 required to give the death penalty. You know, even after
13 they have decided that mitigating don't outweigh the
14 aggravating, they are not required unless they in their
15 individual judgment feel that the death penalty is
16 warranted. Just because they think that the mitigating don't
17 outweigh the aggravating, that does not require them to give
18 the death penalty, and that's what this instruction
19 emphasizes.

20 **BY MR. HORAN:** And I agree with that, and that
21 is covered in the one--

22 **BY THE COURT:** --Your objection is that it is
23 repetitious?

24 **BY MR. HORAN:** Yes, sir.

25 **BY THE COURT:** Okay. In light of the nature
26 of this case, I'm going to give it even if it is
27 repetitious.

28 (Instruction No. DS-1 was given as Sentencing
29 Instruction No. 6.)

1 BY MR. LUMUMBA: Okay. Judge, I don't have
2 any other thing on the instructions. I do have
3 something on something else if you are ready for
4 it.

5 BY THE COURT: Okay.

6 BY MR. LUMUMBA: Several things. We want to,
7 of course, raise a Motion for Judgment
8 Notwithstanding the Verdict.

9 BY THE COURT: Okay. I don't know that this
10 is the proper time to do that though. I think you
11 have to wait until after the case is over.

12 BY MR. LUMUMBA: Okay. Well, that is fine.

13 BY THE COURT: You are certainly entitled to
14 do that, but I think it has to be after we are
15 through.

16 BY MR. LUMUMBA: Okay, well, let's just say
17 this; without argument, I'm going to raise it now.
18 Then I will raise it after--

19 BY THE COURT: --I note that you have
20 preserved it for the record.

21 BY MR. LUMUMBA: Okay. Secondly, we are going
22 to make a Motion to Preclude the consideration of
23 the death penalty in this case, and we make that
24 motion based upon several things. First of all, we
25 want to make the Motion based upon the cases of
26 Inman v. Florida. Inman v. Florida, I am sure the
27 Judge is probably familiar with. It's located at
28 458 U.S. 782. And the second case that will come
29 into play will be Tyson v. Arizona, which the Court

1 is probably also familiar with. It's located at
2 481 U.S. 137. And this second case I cited is a
3 1987 case. Inman is a 1982 case, and there is a
4 progeny of these cases.

5 Essentially, what Inman v. Florida says and
6 Tyson says that-- well, basically Inman says that a
7 case where a person was a getaway car driver in a
8 case, and someone else went in and robbed and
9 killed somebody. That was not enough showing in
10 and of itself that that person actually committed
11 the murder or that he knew that the murder would be
12 committed or that he anticipated. In Inman I think
13 they said that he anticipated that any killing
14 would take place.

15 In Tyson they loosened the standard a little
16 bit where they said that any time when you are
17 acting with reckless disregard for life, then in
18 fact, you can also be given the death penalty as
19 long as you are participating in the enterprise
20 which is designed to rob or whatever.

21 In Mississippi, actually you have got a
22 stronger standard than Tyson because Tyson is that
23 you have-- in Mississippi in the standard that is
24 used in instructing the jury, you either have to
25 kill, intend to kill, attempt to kill, or you have
26 to anticipate that lethal, contemplate that lethal
27 force will be used. So it's stronger than Tyson, I
28 think, that contemplating that lethal force will be
29 used is really stronger than just acting

1 recklessly. So the Mississippi standard is
2 actually stronger than the federal standard.

3 But in any event, and that is the standard
4 under Mississippi law and Mississippi
5 constitutional law. We would say this, that in
6 this case the State has failed miserably to prove
7 that Mr. Flowers actually killed anybody or
8 anticipated. Their witness, their best witness,
9 their scene witness, one is that he was running
10 away. The second one is that he and another man
11 were approaching a-- well, really they were going
12 north, but then they say he was going toward
13 Tardy. Let's presume that the jury accepted that
14 burden. That does not show any proof beyond a
15 reasonable doubt, far from it, that Mr. Flowers
16 shot a gun; he killed anybody; he attempted to kill
17 anybody; that he knew anybody would be killed; or
18 he contemplated that lethal force would be used.
19 So all of those things, the other person could well
20 have done that, and it's at least a 50/50 chance
21 that the other person could have well done those
22 things.

23 So I would indicate to the Court that based
24 upon these case law and the circumstances in this
25 case, I don't think it can be used. And in fact,
26 you know, I am not certainly an expert on all the
27 death penalty cases in this state or other ones,
28 but I think that if a death penalty case applied in
29 this case, it would probably be about as far

1 reaching from actually, when we talk about these
2 circumstantial proofs, as any case ever. I don't
3 think you can find a case which is more
4 circumstantial than this and when less has been
5 proved in this that would actually allow the death
6 penalty to be given.

7 So what I would say is that this case is
8 outside the boundaries, and for that reason that
9 the death penalty can't be given under the statute,
10 the Mississippi statute which articulates the
11 things that must be proven as well as it can't be
12 given under Tyson v. Arizona and Inman v. Florida.
13 So that would be my next motion.

14 BY MR. EVANS: Very briefly in response, Your
15 Honor, I think the Court has heard the evidence.
16 The evidence is there. The sentencing instruction
17 has the Inman factors that the jury must determine,
18 and in this case not only has one jury decided
19 there is sufficient evidence to convict him, but
20 now two juries, 14 jurors have decided there was
21 sufficient evidence and convicted this Defendant.

22 BY THE COURT: Well, 24.

23 BY MR. EVANS: 24. I can't even count.

24 BY MR. LUMUMBA: My only response to that is
25 that out of those 24 jurors, the first 12, of
26 course, didn't hear the same case because they had
27 two witnesses who didn't even testify in this
28 case. I would also point out that out of the 24
29 jurors that have decided, 23 of them have been

1 white trying a defendant, a black defendant accused
2 of killing three white people. I think that the--

3 BY MR. HORAN: --and one black person, Your
4 Honor.

5 BY MR. LUMUMBA: Accused of killing three
6 white people. Now the statistics, I think, and
7 that is the relevant consideration. Of course, he
8 also was charged with killing one black person, but
9 I think that even if you squeeze a black person in
10 in the death scenario, if you check the statistics
11 of blacks tried by juries, predominantly white
12 juries or juries with no more than one black
13 accused of killing anybody white, that you will
14 find out that there has been probably, if anybody,
15 I don't think anybody has ever been acquitted in
16 that circumstance. If there are anybody that has
17 been acquitted, it has been very few. The
18 acquittals in that situation are very rare. And
19 this case is probably--

20 BY MR. HORAN: --I'll have to--

21 BY MR. LUMUMBA: --Excuse me. When I get
22 finished, please.

23 BY MR. HORAN: I just wanted to bring--

24 BY MR. LUMUMBA: --Excuse me. When I finish,
25 please--

26 BY MR. HORAN: --to Mr. Lumumba's attention,
27 Sharon Jane Miller, I tried in front of an all
28 white jury, and she got acquitted. You can look it
29 up.

1 BY MR. LUMUMBA: Excuse me. So I think that
2 is a situation where that is the case. It is very
3 rare that an all white jury acquits a black
4 defendant of killing anybody white.

5 BY THE COURT: Okay, the jury has determined
6 the facts in this case, and they have determined
7 from the facts that he was guilty of capital murder
8 which includes, in order to do that, under these
9 facts and these instructions that they had, they
10 had to find that he was involved with an armed
11 robbery at that place when he did it. And that
12 determination puts this at issue before the jury as
13 to what the type sentence should be. So that
14 Motion is overruled.

15 INSTRUCTION NO. SS-1: BY MR. LUMUMBA: Okay, well the
16 final question is, Judge, to preclude the use of the armed
17 robbery. Well, I am making a Motion to Bar both of the
18 aggravating circumstances which the District Attorney is
19 attempting to use in this case.

20 BY MR. EVANS: We have three.

21 BY MR. LUMUMBA: I am not familiar with the
22 third one. I see the two in here.

23 BY MR. EVANS: Look at that instruction we
24 gave you. It has got three in it.

25 BY THE COURT: I haven't seen it either.
26 Could I have something just for reference?

27 BY MR. EVANS: Yes, sir.

28 (Instruction handed to the Court.)

29 BY MR. EVANS: Under Section "B," Your Honor.

1 BY MR. LUMUMBA: Have you still got that
2 instruction? I think I gave them our copy. When you get
3 finished looking at it, Judge, I will look at it too. I gave
4 them our copy.

5 BY MR. HORAN: That's correct. That's it.

6 BY MR. EVANS: We are going to print some more
7 out. That is the only copy we have got right now.

8 (Pause while the Court reads.)

9 **BY THE COURT:** Okay.

10 BY MR. LUMUMBA: Can I see it?

11 **BY THE COURT:** Sure. I thought you had.

12 BY MR. LUMUMBA: I didn't notice three
13 aggravating circumstances. I noticed two. Let me see.

14 (Pause while Mr. Lumumba looks at
15 instruction.)

16 BY MR. LUMUMBA: The copy that we had didn't
17 have all three of these in it, I don't believe, but it
18 doesn't matter. My objection is to all three.

19 The argument is as follows. As to the capital
20 murder "was committed for pecuniary gain during the course of
21 an armed robbery," I'm not sure that is even a statutory
22 circumstance. They can't use circumstances which are not
23 listed in the statute. That is textbook law.

24 **BY THE COURT:** That is true, but you are
25 talking about number 1?

26 BY MR. LUMUMBA: Yeah, number 1. Let me look.

27 **BY THE COURT:** I am confident that is in
28 there.

29 BY MR. LUMUMBA: I know that there is one

1 about robbery, and I know there is one about pecuniary gain,
2 but I don't think there is a circumstance in the statute
3 which is worded like that. No, it is not.

4 **BY THE COURT:** Well, the Court has held though
5 that you have to use those in the same context. You can't
6 use them separately. It used to be that the prosecution
7 would do armed robbery as one and the pecuniary gain as
8 another. The Court said you can't do that. You must have it
9 in one, so they have approved it, but they have approved it
10 as one aggravator rather than two.

11 **BY MR. LUMUMBA:** Okay. Well, my argument will
12 go to the armed robbery then. I think that their proofs were
13 that Mr. Flowers was supposed to have some kind of beef with
14 the Tardys, and that's what led him there to kill the people
15 involved. I would also point out that, as it relates to that
16 particular aggravating circumstance, the expert, the
17 pathologist testified that the deceased still had jewelry on
18 them which would suggest that there was no attempt to take
19 it.

20 There is no evidence that anything-- there is
21 really no direct evidence that anything was taken from the
22 facility. There is some evidence that the facility was
23 supposed to, in the normal course of business, keep money,
24 but there is no evidence that they actually had anything. It
25 would also be safe to say that by the time the only witness
26 who testified there being no money in the drawer, and that
27 was Ms. Schoene, I think her name was, Melissa Schoene. Ms.
28 Schoene said that the drawer had already-- she didn't find
29 the drawer in the condition that it was in. She didn't get

1 there until 12 o'clock or so, 1 o'clock. We don't know what
2 happened or who dealt with the drawer, who took money out or
3 who put money in. So there is too big of a gap in there, and
4 there is no real proof that any robbery occurred. So that is
5 my objection to that aggravating circumstance.

6 Now if you want me to make an argument on the other
7 two, I can do that right now, or do you want me to stop
8 there?

9 **BY THE COURT:** Well, I can rule on that. One,
10 I think that is a proper statement of the law, and once the
11 jury made the finding that they did, it is properly, they are
12 entitled to have an instruction saying that the jury can
13 consider that. You are entitled to argument, to argue that
14 they didn't, that that didn't make it. But they are entitled
15 to the instruction and for the jury to consider it.

16 **BY MR. LUMUMBA:** The other aggravating
17 circumstance that-- I'm going to argue the one that "created
18 a great risk of death to many persons." The jury cannot
19 properly be allowed to consider whether the Defendant
20 knowingly created a great risk to many persons in this case.
21 These circumstances are designed for those capital cases
22 where the defendant tosses a bomb in a crowd or fires a
23 machine gun indiscriminately toward a group of people. The
24 circumstances are not intended to cover the facts in this
25 particular case.

26 In Georgia the statutory circumstance is rather
27 broad, and it is actually broader than the one in this case.
28 But the statutory aggravating circumstances has basically two
29 components, both of which must be satisfied. First, the

1 evidence by law must show by this act the murderer knowingly
2 created a great risk of death to more than one person in a
3 public place. Second, the evidence must show that the great
4 risk resulted from the use of a weapon or device that is
5 normally hazardous to the rights, to the lives of more than
6 one person.

7 A pistol is not and does not necessarily create a
8 risk of death to more than one person. Great risk does not
9 mean mere possibility, but likelihood and probability.
10 Firing a gun into a crowd can create a great risk of death to
11 more than one person. However, shooting a person one by one
12 does not create a great risk of death and is not what that
13 particular aggravating circumstance was meant to cover.

14 I would also point out that there are cases where
15 two teenagers were killed and they were ruled that that did
16 not create a great risk of death. It was killed in ways
17 similar to this case. Lewis v. State at 398 So.2d 432. That
18 was a Florida case. Shooting one of the, shooting one with
19 two others at risk is not sufficient. Even shooting one
20 person with two other people at risk was not sufficient. And
21 also, I would cite Bassett v. State, 449 So.2d 803. You also
22 have a situation where shooting two people in a public place
23 was not sufficient in Jacobs v. State, 393 So.2d 1060.

24 Ferguson v. State, although six killed and two
25 wounded, finding circumstances incorrectly predicated on
26 dangers to others who might have been on the scene. Ferguson
27 v. State, 417 So.2d 639, and the case law goes on and on
28 that would simply say that that is not sufficient just
29 because a number of people died that a great risk -- a great

1 risk of death has to be created by a single act, a single act
2 of shooting or something of that nature. And that is not
3 necessarily, and a pistol is not necessarily the kind of
4 instrument that would even be considered as creating a great
5 risk of death unless shot into a crowd or something like
6 that. So I would object to that aggravating circumstance.

7 **BY THE COURT:** Okay, let's let him respond to
8 that, and then we will go into the third one.

9 **BY MR. HORAN:** Your Honor, I believe that the
10 case of Jackson v. State is pretty clear on it. It says that
11 when you have multiple murders, the Court is not limited in
12 giving this instruction only in circumstances when the danger
13 created was to unintentional victims. That's what we have
14 here. You don't, it's not limited to that, and it is not
15 limited to reckless activities on the part of the defendant.
16 The fact that he, that we have multiple murders or other
17 persons were killed in this attack certainly is covered by
18 Jackson v. State. The cite on that is 684, 1213.

19 **BY MR. LUMUMBA:** I don't believe Jackson v.
20 State says anything that helps the prosecution in this case.
21 I would certainly be willing to allow, ask the Court to read
22 the case, and I would like to read it again too. But Jackson
23 v. State is not a case which in any way allows this statute
24 to be used or this portion of the statute to be used in this
25 case. Clearly, it's meant to be used in a case where
26 somebody gets in a position and just randomly shoots at a
27 crowd. That is what it is supposed to be. It's not meant to
28 be used in a situation where you have a person who
29 intentionally shoots four different people, and that's the

1 evidence in this case. We don't even know that one person
2 did it, but assuming that one person did it, you don't have
3 that evidence in this case.

4 **BY THE COURT:** I will look at Jackson.

5 BY MR. LUMUMBA: Okay. The other thing is
6 that the, to avoid the lawful arrest circumstance may not be
7 submitted to the jury. Most of the laws just about on cases
8 which are just like this one, the State also seeks to prove
9 that the capital offense was committed for the purpose of
10 avoiding or preventing the detention or the lawful arrest by
11 defendant. There is just no evidence in this case that that
12 was committed. While this may be a proper aggravating factor
13 when there is competent evidence that the killing was
14 committed for this purpose, it must be supported by evidence
15 to that effect.

16 Here the only evidence relied upon to support the
17 fact was the killing itself, and that is exactly the case
18 here. They don't have anybody that says that. They don't
19 have anybody that in any way that says that that was the
20 situation. There is nothing else, and that case is cited as
21 State v. Reese, 353 So.2d 352, and I believe that that is
22 also a case where the person in that case was supposed to
23 know at least some of the people who were there. Plus that
24 is always, that is always an assumption that you can make.
25 If a person kills more than one person or kills anybody in a
26 robbery, you can always assume, you can always assume that
27 they were killing the person because they were trying to not
28 be detected later on. They didn't want any witnesses
29 around.

1 But what that is is duplicitous with the robbery
2 and felony murder aggravating circumstance in the first
3 place. So that, and if they didn't kill the person involved
4 in the robbery, then they wouldn't be subject to capital
5 murder, and the aggravating circumstances of robbery, and now
6 I guess they have joined with it pecuniary gain, is an
7 aggravating circumstance. And now to add to it to avoid
8 risk of flight is duplicitous when there is no separate
9 evidence to show that that was a specific cause other than
10 the fact that a robbery occurred itself. And so that is,
11 there is no evidence whatsoever to show that. And all the
12 law would support that, and I can cite a number of cases on
13 that.

14 BY MR. HORAN: Your Honor, in this particular
15 case this aggravator certainly comes into play when you have
16 a robbery at Tardy Furniture Store and then other employees
17 apparently come in during the course of the robbery, and I
18 think the jury could infer that. They startle the Defendant,
19 and he basically covered his tracks by committing the murder
20 of BoBo Stewart. And I think it's reasonable to conclude
21 from the evidence that has been presented before this jury
22 and that will be represented through a motion by the State
23 that that was the scenario that took place there. And
24 therefore, this particular circumstance would be a viable one
25 for the jury to consider.

26 BY MR. LUMUMBA: As the Supreme Court has
27 recently held, "The aggravating circumstance that the capital
28 offense was committed for the purpose of avoiding lawful
29 arrest should not be used unless clearly supported by the

1 evidence." Here again, another case where I'm pretty sure
2 that the person was supposed to know some of the people who
3 were involved in being robbed. Ladner v. State, and that at
4 the time was a slip opinion in Mississippi. I don't have the
5 cite, but I am sure we could get it. It's in Southern
6 Second, of course. And it occurred, that decision occurred
7 July 17, 1991. That is not a case where-- they should not be
8 able to use that.

9 **BY THE COURT:** Okay, anything else on this
10 instruction?

11 **BY MR. LUMUMBA:** I have nothing else on the
12 instruction or on my Motion to Bar various aggravating
13 circumstances.

14 **BY THE COURT:** Okay, is there anything else to
15 do before we finish these instructions? I'm going to go read
16 this case.

17 **BY MR. LUMUMBA:** No. I don't believe so.

18 **BY THE COURT:** Okay. Let me go back here. I
19 want to read Jackson, and I want to read Evans. I will be
20 right back.

21 (THE COURT WAS IN RECESS WHILE THE COURT LEFT
22 THE COURTROOM TO GO READ THE CASES PREVIOUSLY MENTIONED.
23 UPON HIS RETURN, WITH ALL COUNSEL AND THE DEFENDANT STILL
24 PRESENT BUT WITH THE JURY STILL OUT, THERE WAS THE
25 FOLLOWING:)

26 **BY THE COURT:** Let me rule on this. I want to
27 make my ruling on this so we can get on about typing it. The
28 Court finds one, that under Jackson v. State, they are
29 entitled to the aggravator of "The Defendant knowingly

1 created a great risk of death to many persons" because there
2 are multiple victims in this case. The Court finds though
3 that they are not entitled to the one where it is committed
4 for the purpose of avoiding or preventing a lawful arrest.
5 I'm not going to grant that in this case, and I note having
6 looked back, that is consistent with what my feelings were in
7 the first case, so I'm not going to allow it. I will allow
8 those two aggravators. If y'all will go ahead and get that
9 instruction typed, then we are going to start right at 9
10 o'clock. Okay?

11 BY MR. EVANS: Yes, sir.

12 BY THE COURT: Are y'all doing those other two
13 short ones for me, or do you want Linda to do them?

14 (State's Counsel confer briefly.)

15 BY THE COURT: I will tell you what; I will
16 get Linda to do them for me.

17 (FOLLOWING A RECESS FOR THE PREPARATION OF
18 JURY INSTRUCTIONS, COURT RECONVENED IN OPEN COURT
19 WITH ALL COUNSEL AND THE DEFENDANT PRESENT. PRIOR
20 TO THE JURY COMING IN, THERE WAS THE FOLLOWING
21 CONFERENCE AT THE BENCH:)

22 BY MR. LUMUMBA: What is up with the rule?
23 Does the rule apply to this portion of the
24 proceeding?

25 BY MR. EVANS: I thought the rules always
26 applied to everything.

27 BY THE COURT: I have held both ways. Well, I
28 have not held both ways. I have held in the past
29 that it applies to this proceeding. What is your--

1 BY MR. LUMUMBA: My point is, is that some of
2 my witnesses would like to be in here during the
3 whole proceeding, and whatever the other people--
4 there is nothing that my witnesses are going to
5 impeach, I don't think, that the other side says.
6 I don't see how they would be impeaching what the
7 other side says.

8 **BY THE COURT:** That is not the context that I
9 thought you were raising it in. The context I
10 thought you were raising it in is whether or not if
11 they were in here during the guilt phase--

12 BY MR. LUMUMBA: --Oh.

13 **BY THE COURT:** --can they testify during the
14 sentencing phase. I hold as far as them being in
15 here during the sentencing phase, I'm going to
16 invoke the rule as to that. They can't all sit in
17 here and hear what the others say as to that.

18 BY MR. LUMUMBA: Well--

19 **BY THE COURT:** Do you have any witnesses that
20 were in here in the guilt phase that--

21 BY MR. LUMUMBA: --Yeah, his mother, his
22 father. His father actually wasn't in here during
23 any testimony because he was the last witness if
24 I'm not mistaken.

25 **BY THE COURT:** Uh-hum, he was.

26 BY MR. LUMUMBA: His mother and his aunt and
27 his girlfriend. I think she may have heard the
28 father testify or something like that. I'm not
29 even sure because she was going to be a witness.

1 She may not have been here.

2 BY MR. HORAN: She was in the last part of
3 that, two--

4 BY MR. LUMUMBA: --She was in the last part of
5 it, and then my person who is assisting me in this
6 case as an investigator, those people.

7 BY THE COURT: To which I am sure you object?

8 BY MR. EVANS: Yes, sir. And Your Honor, for
9 the record, it has been my-- now this is counter, I
10 understand, but it has been my position in previous
11 cases that in this phase it did not matter if
12 witnesses sat in on the first phase. The only
13 reason I object is that I have not been allowed
14 through this trial to let my family members, family
15 members of the victim sit in the courtroom because
16 the Court has ruled that they could not testify in
17 this phase if they did. That is the only reason
18 that I object.

19 BY THE COURT: Okay, let me, I have held in
20 the past that they must be excluded under the
21 rule. I have thought about that. I anticipated
22 this was going to come up, so I had thought about
23 that a good bit this week. And I think I'm going--
24 well, not I think. I'm going to change my position
25 on how I'm going to do it from both today and in
26 the future. I'm going to rule that the rule does
27 not apply to, that they can stay in for the guilt
28 phase. The only thing is the restriction is that
29 they cannot testify-- they can testify as to

1 mitigating factors and stuff like that. They can't
2 testify as to what stuff went on that they heard.
3 I mean we are not going to retry the case and do
4 that. Okay? Okay.

5 Let me say this too for the record. I think
6 that ruling is in line with what the Court has
7 said; excluding witnesses is the last option that
8 I'm supposed to consider. It does provide in this
9 case full board cross-examination, whatever that
10 means. But anyhow, y'all understand my ruling.

11 BY MR. EVANS: Yes, sir.

12 BY THE COURT: Okay, we may have to go over
13 some of the instructions again just to clean them
14 up right at the end, but let's go ahead and get
15 started on the proof.

16 BY MR. EVANS: Give me one second.

17 BY THE COURT: Sure.

18 BY MR. LUMUMBA: What now?

19 BY THE COURT: I said we will get started on
20 the evidence.

21 END BENCH CONFERENCE.

22 BY THE COURT: You may bring the jury in. No,
23 wait; first let me make sure about the witnesses.
24 Everybody got their witnesses situated?

25 BY MR. HORAN: We do, Your Honor.

26 BY THE COURT: Okay. Now did everybody
27 understand my rule, my ruling on this phase. The
28 witnesses that are going to testify are under the
29 rule for this hearing.

1 BY MR. EVANS: Yes, sir.

2 BY THE COURT: Okay. You can bring the jury
3 in.

4 JURY ENTERS COURTROOM ON 3/31/99.

5 BY THE COURT: Good morning.

6 BY THE JURY: Good morning.

7 BY THE COURT: Mr. Evans.

8 BY MR. EVANS: Your Honor, before I proceed, I
9 would move at this point for the reintroduction of
10 all testimony and exhibits that we introduced in
11 this trial in our case in chief and in rebuttal.

12 BY THE COURT: Okay, that motion is sustained.

13 BY MR. LUMUMBA: I have an objection to it.

14 BY THE COURT: Okay, would you like to state
15 it? Other than just--

16 BY MR. LUMUMBA: --For all the reasons
17 previously stated; in addition to the fact that I
18 don't believe it's appropriate. I think if he
19 wants it in, he should put it in.

20 BY THE COURT: Okay. The motion is sustained.

21 BY MR. EVANS: Thank you, Your Honor. My
22 first witness will be Kathy Perminter.

23 BY THE COURT: Kathy Perminter.

24 BY MR. EVANS: Yes, sir.

25 BY MR. LUMUMBA: Don't we do any opening?

26 BY THE COURT: Well, you can, yeah. We will
27 do that. I will allow it. Tell her to wait just a
28 minute.

29 BY MR. LUMUMBA: I want one.

1 BY MR. EVANS: You want an opening in this
2 phase?

3 BY MR. LUMUMBA: Yeah, I want an opening.

4 BY THE COURT: I will allow y'all 15 minutes
5 apiece.

6 BY MR. EVANS: All right, sir.

7 OPENING STATEMENT ON SENTENCING BY MR. EVANS:

8 Ladies and gentlemen, y'all have heard the evidence
9 in this case. This part of the case is to determine one
10 factor, what penalty is appropriate in this particular case.
11 We anticipate showing you that in this particular case the
12 death penalty is going to be the appropriate sentence that
13 should be returned. Y'all will be able to look at a lot of
14 factors in this phase, and as you heard me just introduce to
15 the Judge, in this phase of the trial the State is allowed to
16 move to reintroduce all of the testimony and all of the
17 exhibits that you have seen and heard. That I just did, and
18 the Court sustained it. What that means is that you can
19 consider everything that you have seen and heard in the first
20 phase of the trial in making your decision on the penalty
21 phase without us having to sit here and go back over it and
22 over it and over it. So it would be at this phase the same
23 as if we were representing all that evidence to you. Every
24 bit of it can be considered.

25 We are going to show you in this case, in this
26 phase of the case that because of the type of crime that was
27 committed, what penalty is appropriate. We are going to show
28 you in this case as you have already heard, that this is a
29 case where the Defendant went to Tardy Furniture Store. The

1 Defendant went there with a gun. He went there with the sole
2 purpose of taking money that did not belong to him. He went
3 there with the gun for the sole purpose of killing anybody
4 that was in the store. We know that because that's what he
5 did. He know that not only did he kill to forcibly take the
6 money, but he killed to make sure that there weren't any
7 witnesses left in the store. We know that because all four
8 people in the store were left dead. All four people in the
9 store were shot in the head. All of the physical evidence
10 that y'all have seen has shown that. The photographs that
11 y'all have seen--

12 BY MR. LUMUMBA: --Excuse me, Judge. I
13 believe that would be the aggravator that you
14 refused to allow them to present evidence on, isn't
15 it? You allowed two aggravators, and one of them,
16 I think, he is speaking to now. Can we approach?

17 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
18 THE JURY AS FOLLOWS:)

19 BY MR. LUMUMBA: I don't have the instruction
20 in front of me. That's the reason I don't know--

21 BY THE COURT: --I allowed two. One is the
22 armed robbery for pecuniary gain, and the other one
23 is greak risk to multiple people.

24 BY MR. LUMUMBA: Okay, well, what he is
25 arguing now is that he is avoiding--

26 BY THE COURT: --I'm not going to allow either
27 one of y'all to argue. Just tell them what you
28 expect to prove. And I'm going to let you argue it
29 later, but this ought to be real short because it's

1 not argument at all for either side. Okay?

2 BY MR. EVANS: Yes, sir.

3 END BENCH CONFERENCE

4 CONTINUED OPENING STATEMENT BY MR. EVANS:

5 You have seen the evidence. You know what is
6 before the Court. In this phase we are going to put on very
7 few witnesses. We are going to put on the mother of BoBo
8 Stewart. She is going to tell you what kind of impact his
9 death has caused her. We are going to put on the father of
10 BoBo Stewart. He is going to tell you what impact his death
11 has caused him. And we have got a couple of other witnesses
12 we are going to put on to explain to you what type of person
13 he was. We are going to show you that he was a high school
14 student, a teenager, that he was working a summer job. This
15 was his second day on that job. He wasn't even a full time
16 employee. He was there trying to make some money during the
17 summer.

18 These things we are going to show you, and we are
19 going to show you in this case what your verdict should be
20 and why it should be that.

21 Thank you, Your Honor.

22 OPENING STATEMENT BY THE DEFENDANT, MR. CURTIS FLOWERS:

23 Good morning. I am Curtis Flowers. I am the man
24 that you just convicted. This is my sentencing hearing and
25 uh, for a crime that I did not commit. I ask that you spare
26 my life, and if you decide to execute me, then five, not four
27 but five people will be executed. Five innocent people will
28 be executed for a crime that happened at the Tardy incident.

29 My attorney, Mr. Lumumba, will tell you about the

1 evidence that will be presented in this case.

2 OPENING STATEMENT BY MR. LUMUMBA:

3 Good morning, ladies and gentlemen. I'm going to
4 briefly just tell you what we will expect to come out of this
5 hearing which we have been referring to from the last
6 hearing. First of all, all the evidence that we spoke to
7 before, certainly we will argue later on that that is
8 evidence that you should consider when you talk about any
9 kind of death penalty.

10 I want to emphasize a couple of things: A)
11 individual, individual responsibility. Individual
12 responsibility. Individual responsibility. You, there can
13 be no death penalty unless you give it, each and every
14 individual one of you. It can't be anybody do it, only you.
15 Anybody who says that they don't think the death penalty
16 should be imposed, then there can be no death penalty, any
17 one of the twelve jurors.

18 **BY THE COURT:** Mr. Lumumba, I'm going to let
19 you make that argument, but you have to make it at
20 the appropriate time.

21 BY MR. LUMUMBA: And at the appropriate time--

22 **BY THE COURT:** --Wait a minute. Opening
23 statement is only for the purpose of telling what
24 you expect to prove.

25 BY MR. LUMUMBA:

26 And at the appropriate time you will hear that. I
27 will present that, and I am sure that you will bear that
28 out. No law and no rule requires you to put anybody to
29 death.

1 BY MR. EVANS: Your Honor, again this is not
2 proper for opening statement.

3 BY THE COURT: It's not. You are going to
4 have to stick to what you intend to prove. I'm
5 going to let you have plenty of time to argue
6 that.

7 BY MR. LUMUMBA:

8 And let me say this too, is that we will show in
9 this stage and we will argue later on, that this is a case
10 where no one has ever seen this man commit any crime. No
11 print of any kind connected to him. Not one single--

12 BY MR. EVANS: --Your Honor, I hate to keep
13 objecting, but this is not closing argument.

14 BY MR. LUMUMBA: I'm not doing closing
15 argument. I'm telling what we are going to prove.

16 BY MR. EVANS: This is improper for what proof
17 is in this phase of the trial.

18 BY THE COURT: Right. That element of the
19 proof is over. You have got to go with what you
20 are going to put on from the witness stand at this
21 time.

22 BY MR. LUMUMBA:

23 We will, just as the State just got finished
24 arguing, we will present or represent and we have
25 reincorporated in our proofs the same proofs which we gave
26 before which show the things that I just said. In addition
27 to that, we are going to put on persons who will testify as
28 to character of Mr. Flowers. We will have people who will
29 testify to his involvement in a church singing group.

1 We will have persons who will testify to the facts
2 which I think is very important to this case, that this case
3 has not really been about evidence, that it has been about
4 something a little more sinister. We will be able to show
5 you that from the beginning, the prosecution in this case
6 excluded every single black from the jury that it could--

7 BY MR. EVANS: --Your Honor, this is not
8 proper--

9 BY MR. LUMUMBA: --and the only reason--

10 BY MR. EVANS: --and Opposing Counsel knows
11 it--

12 BY MR. LUMUMBA: --that it didn't exclude Mr.
13 Cole is because--

14 BY MR. EVANS: --and I object and ask that he
15 be sanctioned--

16 BY MR. LUMUMBA: --the Judge would not let--

17 (NOTE: Counsel were talking at the same time
18 throughout that sequence and several that are to
19 follow.)

20 BY THE COURT: --Mr. Lumumba. That objection
21 is sustained. You will refrain from that
22 argument.

23 BY MR. LUMUMBA: The only reason that is--

24 BY MR. EVANS: --That is ridiculous--

25 BY THE COURT: --Mr. Lumumba, you will refrain
26 from that argument.

27 BY MR. LUMUMBA: If we are allowed to show
28 what needs to be shown in this case--

29 BY MR. EVANS: --Your Honor, may we approach

1 the bench?

2 **BY THE COURT:** Yes, sir.

3 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
4 THE JURY AS FOLLOWS:)

5 **BY MR. EVANS:** I ask that opposing counsel be
6 sanctioned.

7 **BY THE COURT:** I'm not going to allow you to
8 go into this. I'm not going to allow you to go
9 into it. You know it's improper, and I'm not going
10 to allow you to do it.

11 **BY MR. EVANS:** If he attempts again, I would
12 ask that he be sanctioned, Your Honor.

13 **BY THE COURT:** Well, the sanction is going to
14 be is we are through with opening statements, and
15 let's get on with the proof.

16 **BY MR. EVANS:** Yes, sir.

17 **BY MR. LUMUMBA:** So you are saying I can't
18 talk any more?

19 **BY THE COURT:** Not in openings statements you
20 can't.

21 **END BENCH CONFERENCE**

22 **BY MR. LUMUMBA:** I ask you to--

23 **BY MR. EVANS:** --I call Kathy Perminter, Your
24 Honor--

25 **BY MR. LUMUMBA:** --use your--

26 **BY THE COURT:** --Have a seat, Mr. Lumumba--

27 **BY MR. LUMUMBA:** --individual consideration. And if the
28 truth can't be told--

29 **BY THE COURT:** --Mr. Lumumba, have a seat.

1 BY MR. LUMUMBA: --then I shouldn't be here.

2 BY MR. EVANS: Your Honor, may I proceed?

3 BY THE BAILIFF: Kathy what, Your Honor?

4 BY THE COURT: Kathy Perminter.

5 BY MR. LUMUMBA: Now you notice nobody said--

6 BY THE COURT: --Mr. Lumumba, you must sit
7 down.

8 BY MR. LUMUMBA: Am I going to be executed
9 too, Judge?

10 BY THE COURT: You must sit down, Mr.
11 Lumumba.

12 (Witness enters the courtroom.)

13 BY THE COURT: Have you been sworn, ma'am?

14 BY THE WITNESS: Yes, sir.

15 BY THE COURT: Have a seat up there.

16 BY MR. LUMUMBA: May we approach, please?

17 BY THE COURT: No, sir. We are going to
18 continue with the proof.

19 BY MR. EVANS: May--

20 BY MR. LUMUMBA: --May we approach on another
21 matter?--

22 BY MR. EVANS: --I proceed, Your Honor?

23 BY MR. LUMUMBA: I have another matter.

24 BY THE COURT: All right.

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
26 THE JURY AS FOLLOWS:)

27 BY MR. LUMUMBA: I do have some things to say
28 which have to do with what these witnesses are
29 going to say. I would ask for 5 minutes to say

1 those things.

2 **BY THE COURT:** No, sir. You have forfeited
3 that by interjecting, and then you would not follow
4 the orders of the Court.

5 **BY MR. LUMUMBA:** Excuse me; excuse me. I
6 haven't forfeited anything. I sat down like the
7 Court told me to.

8 **BY THE COURT:** No, sir. You did not. You
9 took three times for you to do that. And you will
10 not follow--

11 **BY MR. LUMUMBA:** --I need to make a record
12 right now. I want to make a record, and I ask for
13 the jury to be excused for me to make a record of
14 what I would say in opening statement at this
15 point.

16 **BY THE COURT:** Okay.

17 END BENCH CONFERENCE.

18 **BY THE COURT:** Ladies and gentlemen, I need
19 for y'all to go out for just a moment.

20 JURY LEAVES THE COURTROOM.

21 **BY MR. LUMUMBA:** First of all, let me indicate
22 to the Court that as far as the Court's ruling is
23 concerned, and then I'm going to tell you what my
24 final statements would be in opening statement.
25 The District Attorney got up and talked about the
26 case, started talking about argument, not just
27 about facts in the case that he intended to prove.
28 In fact, he talked about facts which were offered
29 in the former case, and the Court precluded me from

1 doing it.

2 Secondly, what my presentation would be at
3 this time is that the witnesses who are about to
4 testify are testifying to things which my client
5 had nothing to do with as we think the evidence
6 shows and will show. And so I feel that it's
7 important at this time to sensitize these jurors to
8 the fact that although we empathize with the
9 families of-- and the client empathizes with the
10 families, and there will be proof of that in my
11 case, that the client empathizes with the families
12 who have suffered these problems, that these
13 particular hardships which they must endure are not
14 ones which were caused by him, and so therefore
15 shouldn't be accredited to him.

16 Finally, I want to emphasize that this is a
17 new process, that whatever they have found that
18 there has to be refund here, and it has to be
19 refund in the context, in the context, in the
20 context of the sentencing hearing, not in the
21 context of something else. And that's what I
22 believe that I should do.

23 Furthermore, if I'm not going to be allowed to
24 do that, then for the record, I'm leaving because,
25 and my client is not going to be represented in
26 this hearing, and the Court can deal with that as
27 it may. I'm not going to stay here in something
28 which is a charade, a kangaroo masquerade and take
29 this kind of a situation and be party of it. I'm

1 not party of injustices. I am trying to do what is
2 right, and I think what is right is what I need to
3 be able to tell the jury. If I can't make that
4 five minute presentation, then I will come back at
5 a certain time when I think I can be useful.

6 **BY THE COURT:** Of course, if you leave, you
7 just take it upon yourself for the consequences of
8 whatever happens after that. Let me ask you this,
9 Mr. Lumumba. Let's say I give you that five
10 minutes to say that. What assurances will you give
11 the Court that you will not make improper
12 argument?

13 **BY MR. LUMUMBA:** As far as I am concerned, I
14 haven't made any improper argument, but if the
15 Court is asking me for assurances that I won't go
16 into the matter which the Court told me not to go
17 into it, then I won't do it.

18 **BY THE COURT:** All right. Well, of course,
19 you made argument and that is improper. And at
20 this--

21 **BY MR. LUMUMBA:** --and he made argument too.

22 **BY THE COURT:** And I told him not to make any
23 more and he didn't. When I told you not to make
24 any more, you continued time and time and time
25 again. Now I will give you the opportunity to tell
26 this jury what you expect to prove. But I'm not
27 going to allow you to go into those things you did
28 before. And if you do it again, then I'm going to
29 disallow it, and if you decide to leave, you will

1 just have to leave.

2 BY MR. LUMUMBA: Well, I know you don't care
3 for me. I know that.

4 BY THE COURT: Well, I mean I have got no
5 position on it one way or another. You are the one
6 said you are going to leave.

7 BY MR. LUMUMBA: That is good. That is good.

8 BY THE COURT: All right, let's have the jury
9 back. Ma'am, Ms. Permitter, I'm going to ask you
10 to step down one more time. You have got five
11 minutes, Mr. Lumumba.

12 BY MR. EVANS: I would like for them to be
13 told to disregard the comments that Opposing
14 Counsel made.

15 JURY ENTERS THE COURTROOM.

16 BY THE COURT: Let me go over one thing for
17 you that I think you already know. As I told you
18 at the first part of this trial, opening statements
19 are not evidence, and you can't consider them as
20 evidence. They are just what the lawyer says they
21 are going to prove. I have ruled, as y'all saw
22 while ago, that some of the things that Mr. Lumumba
23 told y'all were improper opening statements. And
24 I'm not going to allow him to go in that, but I am
25 going to allow him to tell you now what he expects
26 to prove at this stage of the proceeding.

27 FURTHER OPENING STATEMENT BY MR. LUMUMBA:

28 Good morning again, ladies and gentlemen. We
29 expect that during the course of the proof in this case at

1 this time, which is a very critical life and death situation
2 in itself, that what you will find is that Mr. Flowers is not
3 responsible for the very, very tragic consequences which the
4 family has indeed suffered. We do not believe that anything
5 will come up in this part of the case which will suggest that
6 what occurred to the family, which he empathizes with, which
7 we all do, is something which he has caused. And so as you
8 listen to those things, and we feel that they have every bit
9 of right to speak, we will be able to point out that nobody
10 in the family has any information to suggest personally of
11 their own knowledge that Mr. Flowers caused any of these
12 things to occur.

13 I would also point out that as you go through this
14 phase, you will be instructed at the end that this is a new
15 phase. This is a new phase where each individual must
16 evaluate whether there has been proof beyond a reasonable
17 doubt of several things. And one of the things that they
18 will have to evaluate is whether there has been proof of
19 reasonable doubt that he actually killed someone, attempted
20 to kill someone, intended to kill someone, or contemplated
21 that lethal force would be used.

22 Now the finding which has occurred to this point is
23 not one which is the finding that must occur in order for you
24 to make a decision in this case as far as sentencing is
25 concerned. It's a new finding. It's a new question of
26 reasonable doubt because reasonable doubt in your mind, each
27 one of you individually, must be resolved in the sentencing
28 phase as to whether you find beyond a reasonable doubt in the
29 sentencing phase that the evidence that has been presented to

1 you, that same evidence which had no proof of witnesses
2 seeing him do anything, that same evidence which we will once
3 again during this phase, we will show you this board, that
4 same evidence which has a different description in every
5 corner and in every place, that same evidence which has been
6 disputed by many different witnesses, and we reincorporate
7 our evidence from the other phase too. You will be asked to
8 determine in this phase whether you know beyond a reasonable
9 doubt that Patricia Hollman was telling you the truth and
10 that her brother is lying and that you believe that so
11 greatly that you would be willing to go for the death
12 sentence for this gentleman, Mr. Flowers. Are you so sure of
13 that? And that is something that will have to be considered
14 in this phase.

15 We will also, you will also be asked to consider in
16 this phase something which I want to bring to your attention
17 but what is not a major part of our presentation, but which
18 will come up. You will be asked to consider whether there is
19 any aggravating circumstance that has been proved to start
20 off with. And one of those aggravating circumstances they
21 are going to bring to your attention is supposed to be the
22 robbery itself even though our presentation has been and
23 consistently remains that Mr. Flowers was not at that store;
24 he didn't kill anybody, and there is no reasonable doubt
25 proof that he did. In this phase we are not going to talk
26 about the last phase unless it is something that has been
27 done.

28 But secondly, we would say that there is really no
29 proof beyond a reasonable doubt that anything was ever taken

1 from the store, we don't think, and we are just looking at
2 that because we weren't there and we don't know. But if you
3 look at the situation and it will come to your attention that
4 the pathologist, for instance, said the valuables were left
5 on the persons. It will also come to your attention that
6 nobody really knows exactly what was in the drawer, and when
7 Schoene came to the scene, she really doesn't know of her own
8 personal knowledge who had been in and out of the drawer
9 before she got there. That may be a big consideration for
10 you, and it may not. It doesn't really matter to us, but it
11 is something that we just point out to you for the record.

12 And I think the other thing is that the Court has
13 allowed the prosecution and will allow the prosecution to
14 raise as an aggravating circumstance for your consideration;
15 you have to find that these aggravating circumstances are
16 proved beyond a reasonable doubt. If any one of you finds
17 that it's not proven beyond a reasonable doubt, then you
18 can't go any further. You can't even consider it. And I
19 think that that thing is-- in just a minute I'm going to face
20 the Court and ask him for direction.

21 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
22 THE JURY AS FOLLOWS:)

23 BY MR. LUMUMBA: That has to do with the
24 flight question. What is this? This second one
25 had to do with--

26 BY THE COURT: --great risk. I took out the
27 flight.

28 BY MR. LUMUMBA: Okay.

29 END BENCH CONFERENCE

1 BY MR. LUMUMBA:

2 It has to do with great risk of death to many
3 persons, and of course, that is your consideration for how
4 you find that. You also will be asked whether the mitigating
5 factors outweigh the aggravating factors. If they do, if
6 they do, then of course, you have to vote, you can't even go
7 any further in considering the death penalty. Only if it
8 gets past those two hurdles, then at any point would you be
9 able to even consider the death penalty. And you will be
10 given an instruction at the end of the proceeding telling you
11 that it is an individual responsibility. You will also be
12 given an instruction in these proceedings telling you that
13 only if you decide personally that it's warranted should you
14 vote that way, and if you decide personally that it's
15 warranted, then if you decide personally that it's not
16 warranted, then there can be no death penalty. So that's why
17 each one of you have an individual responsibility.

18 And I anxiously await to talk to you at the end of
19 these proceedings, and I will certainly do so. And we once
20 again, as we enter into this, ask each individual who is here
21 to put aside any biases that they may have. We know that in
22 some cases individuals have told us that they have, who are
23 sitting on this panel have told us that they have problems
24 with interracial marriages and stuff like that. We ask them
25 to set that aside.

26 This is an incident which has affected a number of
27 people. Deaths have occurred as you will see in the evidence
28 of three white people and one black person. Of course, as we
29 look at the audience, we don't see Mr. Golden's family here.

1 BY MR. EVANS: Your Honor, that is improper,
2 and Mr. Golden's family has been here, and that is
3 definitely improper for this comment.

4 BY THE COURT: Well, it is off in the argument
5 again, and that is not, this is not the time for
6 that.

7 BY MR. LUMUMBA:

8 Well, the evidence will show, I think, that his
9 family was not here and I think--

10 BY MR. EVANS: --Your Honor, I don't know how
11 many times I'm going to have to object. It is
12 improper, and it is also not true.

13 BY MR. LUMUMBA: Well, it is true. Whether it
14 is proper--

15 BY MR. EVANS: --No, sir. It is not--

16 BY MR. LUMUMBA: --I will follow, I will
17 follow the Court's instruction.

18 Thank you very much, and we will be proceeding in
19 this case on that basis that I suggested to address you
20 individually.

21 BY THE COURT: Okay. Ms. Perminter.

22 (Witness enters the courtroom.)

23 KATHY PERMINTER,

24 a white female called to testify by the State of Mississippi
25 on the Sentencing Phase, having first been duly sworn,
26 testified as follows, to-wit:

27 BY THE COURT: State your name for the
28 record.

29 BY THE WITNESS: Kathy Perminter.

1 DIRECT EXAMINATION BY MR. EVANS:

2 Q. Ms. Perminter, where do you live?

3 A. In Starkville.

4 Q. Ms. Perminter, do you know why we are here?

5 A. Yes, sir.

6 Q. I want to just make this short and to the point.

7 What was your relationship with Derrick "BoBo" Stewart?

8 A. I'm his mother.

9 Q. Okay. And how old was Derrick at the time he was
10 killed?

11 A. He was 16.

12 Q. What was his position as far as in school at the
13 time he was killed?14 A. He was an outstanding athlete in school. He was
15 just, he was just an all-- he was wonderful. He was a
16 wonderful person. Everybody loved him in school.

17 Q. And I believe he was in sports; is that right?

18 A. Yes, sir.

19 Q. What sports was he in?

20 A. Baseball was his main.

21 Q. Ms. Perminter, how has his death affected your
22 family?23 A. Well, it's like a nightmare. Everybody tells you
24 time will help. It does. But it never goes away. I get up
25 every day; it's like I'm in a dream world, you know, that
26 this has happened. We have Christmas. There is always that
27 one person missing, and birthdays, Easter, any occasions that
28 we have. It is hard on my whole family. It has been a very
29 bad tragic to me.

1 Q. Yes, ma'am.

2 A. I'm not, I lay down at night. I still have this
3 thing; what did my son go through? And it kills me. (NOTE:
4 Witness is crying.) I will never know. I know he never
5 harmed anyone. He didn't deserve it. He didn't deserve
6 anything he got.

7 Q. Is there anything else you would like to tell the
8 jury about how it has affected you?

9 A. Like I said, it has affected my life in the worst
10 way to ever think anything could happen to me like this. It
11 doesn't seem real at all, but I have to tell myself that it
12 is real. BoBo, as far as the type person he was, he was a
13 wonderful person. He loved his job. He had just started.
14 The last time I spoke with him, it was on a Sunday night.
15 They were going to play a baseball tournament starting that
16 Monday. He talked about his job. He said, "Mama," this was
17 the last words I heard he said. He said, "I got a good job
18 now." He said, "It is air conditioned. I have to sweep the
19 floor and dust," but he said, "I don't mind it." And he
20 just, you know, he loved his job that he had, that he had
21 just gotten.

22 When BoBo started kindergarten, he from day one, he
23 told me to go on. Of course, naturally as a mother, I
24 cried. He didn't cry. Then when he went to first grade, he
25 came home after being in the first grade two years, and he
26 said, he said, "Mama, if all we are going to do in school is
27 just do my ABC's and count to ten," he said, "I would just
28 rather go to work and make money because I can do that." But
29 I explained to him every day would be a different day.

1 BY MR. LUMUMBA: Judge, excuse me. May we
2 approach for a moment, please?

3 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
4 THE JURY AS FOLLOWS:)

5 BY MR. LUMUMBA: I object. This witness is
6 not talking about any impact on her. I mean, you
7 know, it has been ruled to be improper for somebody
8 to just get up in front of the jury crying and
9 reminisce over the death of their loved one, and
10 too you have an instruction which tells them don't
11 use sympathy, and this is all this is. I not only
12 object; I am asking for a mistrial, a mistrial of
13 the sentencing phase and ask, you know, that this
14 be stricken. I am asking for a mistrial.

15 BY THE COURT: Okay, that motion is overruled,
16 but direct her testimony more back to where his
17 age.

18 BY MR. LUMUMBA: There is really nothing that
19 she said for the last several minutes which have
20 anything to do with him, nothing whatsoever.

21 END BENCH CONFERENCE.

22 BY MR. EVANS: Your Honor, I have no further
23 questions of this witness.

24 BY THE COURT: Okay, Mr. Lumumba.

25 BY MR. LUMUMBA: I have no questions.

26 BY MR. EVANS: We would ask--

27 BY THE COURT: --Is she finally excused?

28 BY MR. EVANS: Yes, sir. We would ask that
29 she be allowed to stay in the courtroom.

1 **BY THE COURT:** All right. Ms. Perminter, you
2 may do so.

3 WITNESS EXCUSED.

4 **BY THE COURT:** Who do you have next?

5 BY MR. HORAN: George Harris.

6 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
7 THE JURY AS FOLLOWS:)

8 BY MR. LUMUMBA: I would ask for a similar
9 instruction as to every witness including the ones
10 they are calling out. They are just calling people
11 up here to bawl and cry and prejudice this jury.
12 We could just throw the first part of the
13 instruction number one right out the window which
14 says no sympathy. I mean how-- so if they have
15 specific things to say about impact, how it has
16 affected their family, they don't have a job, or
17 they don't have his income, that kind of thing, but
18 this other stuff, Judge, is totally inappropriate.

19 **BY THE COURT:** I don't know what Mr. Harris is
20 going to testify to.

21 BY MR. HORAN: He is the baseball coach,
22 Judge.

23 BY MR. LUMUMBA: I am just asking that he not
24 do what the last witness did. I think that is a
25 reasonable thing for me to request at this time.

26 **BY THE COURT:** I'm going to confine to his age
27 area. In other words, I don't want to go back to
28 birth.

29 BY MR. HORAN: I understand.

1 END BENCH CONFERENCE.

2 **BY THE COURT:** Mr. Harris, have you been
3 sworn?

4 BY THE WITNESS: No, sir.

5 **BY THE COURT:** Raise your right hand.

6 **GEORGE HARRIS, JR.,**

7 a white male called to testify as a witness by the State of
8 Mississippi in the Sentencing Phase, having first been duly
9 sworn, testified as follows, to-wit:

10 **BY THE COURT:** Have a seat up there, please.

11 DIRECT EXAMINATION BY MR. HORAN:

12 Q. Please state your name, if you would again?

13 A. George Harris, Jr.

14 Q. Mr. Harris, where do you live?

15 A. In Winona, Mississippi.

16 Q. And what do you do in Winona?

17 A. I'm an animal health technician with veterinary
18 Services, and I also work in my wife's jewelry store.

19 Q. Did you know a young man during his lifetime by the
20 name of Derrick "BoBo" Stewart?

21 A. Yes, sir. I did real well.

22 Q. How did you come to know Mr. Stewart?

23 A. (NOTE: Witness is crying.)

24 BY MR. LUMUMBA: Judge, I ask that Mr. Harris
25 please--

26 BY THE WITNESS:

27 A. --He, he was about my son's age.

28 **BY THE COURT:** Wait just a minute.

29 BY MR. LUMUMBA: May I ask that the witness,

1 this witness and all witnesses be given water and
2 an opportunity to get their composure. I
3 understand how traumatic the experience is, and I
4 understand that. But I also understand that your
5 instruction says that no juror can take into
6 consideration sympathy, and I would like to please
7 try to factor that out.

8 **BY THE COURT:** Mr. Harris, do you need some
9 water?

10 BY THE WITNESS: I am fine.

11 BY MR. HORAN: I think he is making every
12 effort, Your Honor, to compose himself.

13 BY MR. HORAN:

14 Q. You were fixing to explain how you came to know
15 BoBo.

16 A. I coached BoBo about every other summer in the
17 summer baseball. My son was a year younger than BoBo, so I
18 coached him every other summer, mostly every other summer,
19 and he lived sort of around the corner from where I live
20 now.

21 Q. Did you get to know BoBo as a result of the
22 coaching and the fact that he is a pretty close neighbor?

23 A. I did. BoBo was a fine young man.

24 Q. During the course of coaching him, did you coach
25 him even up close to the time of his death? Did you help
26 coach him?

27 A. I did. The night before-- I think this is right.
28 We had a ball game on Monday night, and BoBo was killed the
29 next day on Tuesday. And that was the last game that BoBo

1 ever played in was that Monday night, and we were getting the
2 team ready to get ready for this state tournament. And BoBo
3 told the coaches, he says-- we were trying to, you know, get
4 them ready to play and fired up, and he said, "If y'all will
5 just get out of the way, I can do more with these boys than
6 y'all can." That is the kind of leader and young man that he
7 was.

8 BY MR. HORAN: That's all I have, Your Honor.

9 BY MR. LUMUMBA: Just a couple of short
10 questions.

11 CROSS-EXAMINATION BY MR. LUMUMBA:

12 Q. Good morning, Mr. Harris.

13 A. Good morning.

14 Q. Good morning. You were playing in the summer ball
15 with BoBo, in the summer ball?

16 A. That is the type of ball that I coached when I
17 coached BoBo.

18 Q. Okay, that is kind of like AAU? Is that the same
19 thing? Amateur Athletic Union or something similar to that?

20 A. Well, in Winona we play Dizzy Dean baseball. There
21 are several kinds you can play, but we chose to play Dizzy
22 Dean ball.

23 Q. Okay, and I know AAU is headquartered in Mettarie,
24 Louisiana. Where is Dizzy Dean headquartered at?

25 A. I think that Dizzy Dean headquarters is, I think
26 it's in Saint Louis.

27 Q. Okay, and you know, for instance, like and you do
28 get very close to your boys because I know I coach little
29 fellows in basketball. So you get very close to these boys;

1 is that correct?

2 A. Too close probably.

3 Q. You probably do. But now actually, and Mr. Harris,
4 and you are so close that it really hurts to lose one. Is
5 that correct?

6 A. Yes, sir.

7 Q. Any kind of way, but certainly this way?

8 A. Yes, sir.

9 Q. Now Mr. Harris, were you present at all at Tardy's
10 Furniture on the 16th day of July, 1996?

11 A. Was--

12 Q. Were you there when this incident occurred?

13 A. No, sir. I came by there later that day.

14 Q. Okay. So you wouldn't know of your own personal
15 knowledge from seeing anything, from seeing anything, you
16 wouldn't have any idea what happened or who did what. Is
17 that correct?

18 A. No, sir.

19 Q. Okay. Thank you.

20 BY MR. LUMUMBA: I have no further questions.

21 BY THE COURT: Is he finally excused?

22 BY MR. LUMUMBA: He is.

23 BY MR. EVANS: Yes, sir.

24 BY THE COURT: Mr. Harris, you can stay in the
25 courtroom or you are free to go.

26 WITNESS EXCUSED.

27 BY THE COURT: Who do you have next?

28 BY MR. EVANS: Randy Stewart.

29 (Witness enters the courtroom.)

1 **BY THE COURT:** Mr. Stewart, you have been
2 previously sworn, haven't you?

3 **BY THE WITNESS:** Yes, sir.

4 **BY THE COURT:** Have a seat up there.

5 **RANDY STEWART,**
6 a white male called to testify as a witness by the State of
7 Mississippi on the Sentencing Phase, having first been duly
8 sworn, testified as follows, to-wit:

9 **BY THE COURT:** State your name for the
10 record.

11 **BY THE WITNESS:** Roy V. "Randy" Stewart.

12 **BY MR. EVANS:** May I proceed, Your Honor?

13 **BY THE COURT:** Uh-hum.

14 **DIRECT EXAMINATION BY MR. EVANS:**

15 Q. Mr. Stewart, where do you live?

16 A. Winona, Mississippi. 108 North Central.

17 Q. Mr. Stewart, again to try to kind of cut short and
18 to the point, what was your relationship with Derrick "BoBo"
19 Stewart?

20 A. He was my baby son.

21 (NOTE: Witness is starting to cry.)

22 Q. Okay, and how old was he at the time that he was
23 killed?

24 A. Had just turned 16.

25 Q. Now I understand he had just started working at
26 Tardy Furniture; is that correct?

27 A. Yes, sir. He had worked part of a day Thursday and
28 then Friday, and then he went that Tuesday.

29 Q. Why had he started to work?

1 A. He wanted extra money. He was, needed a class
2 ring, his junior senior banquet, pictures. He just wanted to
3 help me.

4 Q. He wanted to help you?

5 | A. Yes, sir.

6 Q. And I'm not trying to embarrass you, but what is
7 your family's position as far as money?

8 | A. I would say in the lower middle class.

9 Q. Would it be a true statement that BoBo needed to
10 work to help the family?

11 A. Yes, sir.

12 Q. We have already gone through that he was in school
13 and in sports. I'm just going to simply ask you this. What
14 impact has his death had on your family?

15 A. I don't know about Cindy and Tom, but I will never
16 be the same person. He just, I don't know; he was just so
17 good of a kid. He was no trouble. All I ever fussed at him
18 about was grades in school, and I know he could have done
19 better.

20 | 0. How does this affect you today?

21 A. Oh, sleepless nights. Misery. Just, I can't put
22 it into words. You just have to experience it.

23 Q. Is there anything else as far as how this has
24 affected you that you would like to tell the jury?

25 A. No, sir.

26 BY MR. EVANS: Tender the witness, Your
27 Honor.

28 BY MR. LUMUMBA: Just one brief question.

29 CROSS-EXAMINATION BY MR. LUMUMBA:

1 Q. Good morning, Mr. Stewart.

2 A. Morning.

3 Q. Were you present when this tragedy occurred? Were
4 you actually at Tardy?

5 A. No, sir. I was at Superior Asphalt Plant at work.

6 BY MR. LUMUMBA: I have no further questions.

7 BY THE COURT: Is he finally excused?

8 BY MR. EVANS: Yes, Your Honor. We would ask
9 that he be released and allowed to stay in the
10 courtroom.

11 WITNESS EXCUSED.

12 BY MR. LUMUMBA: May we approach?

13 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
14 THE JURY AS FOLLOWS:)

15 BY MR. LUMUMBA: Judge, just for the record,
16 in case I haven't done it already; I think I have
17 done it, but in case I haven't done it, I'm
18 objecting to the victims' impact statements
19 period. Some case law certainly on the national
20 level has ruled that they are more prejudicial than
21 probative, and I think they are. So I'm asking,
22 I'm objecting to any kind of victim's impact
23 statement and ask that any that has been given be
24 stricken from the record. That's my objection.

25 BY THE COURT: Well, of course, our Supreme
26 Court allows it, so it's overruled.

27 END BENCH CONFERENCE.

28 BY MR. HORAN: The State calls Percy Legg.

29 (Witness enters the courtroom.)

1 **BY THE COURT:** Have you been sworn, sir?

2 BY THE WITNESS: No.

3 **BY THE COURT:** Would you raise your right
4 hand.

5 **PERCY LEGG,**

6 a white male called to testify as a witness by the State of
7 Mississippi in the Sentencing Phase, having first been duly
8 sworn, testified as follows, to-wit:

9 **BY THE COURT:** Have a seat up here, please.
10 State your name for the record.

11 BY THE WITNESS: My name is Percy Legg.

12 BY MR. HORAN: Excuse me, Your Honor. May I
13 proceed?

14 **BY THE COURT:** Uh-huh.

15 DIRECT EXAMINATION BY MR. HORAN:

16 Q. Mr. Legg, you live in Winona, I assume?

17 A. Yes, I do.

18 Q. And what do you do in Winona?

19 A. I am a physical education teacher at the elementary
20 school and also a coach.

21 Q. At the Winona--

22 A. Right. In Winona Public Schools.

23 Q. Did you come to know a student by the name of
24 Derrick "BoBo" Stewart there at the Winona Public Schools?

25 A. Yes, I did.

26 Q. How did you come to know BoBo?

27 A. BoBo started playing summer league ball at the age
28 of probably 6 to 7. That's when I first met him. Then every
29 other year I would coach an all star team, and BoBo would be

1 on it. The age group that I had would catch up to him. And
2 the last night that I saw BoBo was of the summer all star
3 team. And I was the head coach, and I told BoBo-- he didn't
4 pitch that night, and I told BoBo that night, I said, "You
5 are going to pitch tomorrow." And he reached up and he
6 hugged me, and he thanked me. And that's the last time I saw
7 him.

8 Q. What effect, I mean what kind of ball player was
9 BoBo? Was he a good kid basically?

10 A. Very good. Very good.

11 Q. Did he, would you give the Court and the jury the
12 benefit of your knowledge of his character?

13 A. It was extremely, extremely good character.

14 BY MR. LUMUMBA: Excuse me. Judge, I don't
15 think that that is appropriate. I'm going to
16 object to that. I don't think so.

17 BY THE COURT: Let me see y'all up here.

18 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
19 THE JURY AS FOLLOWS:)

20 BY MR. HORAN: What is the basis of this
21 objection?

22 BY THE COURT: Well, what is the basis of this
23 testimony?

24 BY MR. HORAN: To show this victim's
25 character.

26 BY MR. LUMUMBA: --I don't think--

27 BY THE COURT: --But victim impact is
28 admissible. Why is this?

29 BY MR. HORAN: What type of person one is is

1 certainly admissible. That goes to what impact it
2 had on the community, the effect that he had on the
3 community from what kind of person he was. I'm
4 getting to what kind of effect did he have on the
5 other players on the team. All he is going to
6 testify to is he was basically a leader of the
7 team. That is it. I will lead him on that.

8 BY MR. LUMUMBA: Wait. No, I'm just saying
9 that, you know, I don't think it makes a
10 difference. You know, a person dies; it doesn't
11 make any difference what kind of character he had.
12 You know, so I think it's essentially an irrelevant
13 inquiry.

14 BY MR. HORAN: I will withdraw. It's not that
15 big an issue, that particular question.

16 BY THE COURT: Okay.

17 END BENCH CONFERENCE.

18 BY MR. HORAN: I will withdraw the question,
19 Your Honor.

20 BY MR. HORAN:

21 Q. Was BoBo a leader on the baseball team?

22 A. Yes, he was, very much so.

23 Q. What impact-- and I assume he had a number of
24 friends on that team?

25 A. Right.

26 Q. And you talked with them on a regular basis?

27 A. Right.

28 Q. What impact on them has BoBo's death had?

29 A. Well, the day, the day of the, that we found out,

1 there was 14 kids, and they were completely destroyed, plus
2 the three coaches because he was a friend, but he was also as
3 close as a brother to a lot of them. And--

4 BY MR. LUMUMBA: Just for the record, Judge,
5 and I don't want to interrupt, but I think that is
6 hearsay. I mean I don't have any problem--

7 BY MR. HORAN: That is his observations.

8 BY MR. LUMUMBA: What my concern is I don't
9 have any problem testifying to the impact on Mr.
10 Legg, but I think it is objectionable.

11 BY THE COURT: Well, it's in the nature of a
12 lay opinion which I think he is in a position to
13 give.

14 BY MR. HORAN: Go ahead, Mr. Legg.

15 BY THE WITNESS:

16 A. And that day that it happened it was 14-- the
17 coaches and myself had fourteen children we had to deal with
18 that was as-- didn't know how to explain to them because like
19 I say, they had seen him the night before and they didn't get
20 to see him again and didn't get to tell him, you know, goodbye
21 or anything like that. But he was a leader as to the point
22 of, that he would take charge. He would actually say, "I
23 will talk to the team." "I will, you know, take care of
24 this" or "We will stay for batting practice." And you know,
25 that is just something that it is hard to come by. You know,
26 true, a true leader is something that is not very easily
27 taken hold of, and he was willing to relish that role as a
28 true leader. And he was a true leader and a very, very fine
29 person on top of that, you know, very respectable. He was

1 respectable to adults and to his other ball players, to his
2 peers. And it just, it was an impact on the whole team.

3 BY MR. HORAN: I have nothing further.

4 BY MR. LUMUMBA: I have no questions of Mr.
5 Legg.

6 BY THE COURT: All right, sir. Is he finally
7 excused?

8 BY MR. EVANS: Yes, sir.

9 BY THE COURT: You may leave or you may stay.

10 WITNESS EXCUSED.

11 BY THE COURT: Who will you have next?

12 BY MR. EVANS: One second, Your Honor.

13 (State's Counsel confer briefly.)

14 BY MR. EVANS: Your Honor, at this point the
15 State rests.

16 STATE RESTS ON SENTENCING PHASE.

17 BY THE COURT: Who will you have first?

18 BY MR. FREELON: Can we approach the bench
19 first, Your Honor?

20 BY THE COURT: Uh-hum.

21 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
22 THE JURY AS FOLLOWS:)

23 BY MR. FREELON: I had raised before the trial
24 started an issue that, about Curtis and a gun. He
25 had allegedly shot someone once before and ask the
26 Court is that going to be proper on the guilt [sic]
27 phase?

28 BY MR. EVANS: I'm not going to bring that up
29 unless they open the door again. I do not

1 anticipate asking it.

2 BY THE COURT: But I don't-- define "opening
3 the door."

4 BY MR. FREELON: Yeah, that's--

5 BY MR. EVANS: --If they go into the type
6 questioning they did before that puts his character
7 in issue, and the witness has testified that he is
8 not violent, has never been violent, things of that
9 such, then they will open the door.

10 BY THE COURT: I think if you have witnesses
11 that say that he has no violent past, then I think,
12 I think you do open it up.

13 BY MR. EVANS: I do not anticipate going into
14 it unless they open it up.

15 BY MR. LUMUMBA: What is it?

16 BY MR. HORAN: Talking about y'all's
17 previously filed motion in limine with reference to
18 his prior bad act.

19 BY MR. FREELON: Prior bad act--

20 BY MR. HORAN: --violent bad act.

21 BY THE COURT: They have not gone into it on
22 direct, so the only way they can get into it is if
23 y'all open the door.

24 BY MR. FREELON: So if we ask about his, what
25 type of person he is, and they say he is a good
26 person--

27 BY THE COURT: Well, if you put his character
28 at issue, and part of that is that he has not had
29 any violent acts in his past, sure, you would.

1 BY MR. FREELON: I have got to use the rest
2 room. Could we take at least five minutes?

3 BY THE COURT: Okay. I do too.

4 BY MR. LUMUMBA: Just one second. Mr. Bradley
5 is, and the purpose of his testimony would be to
6 demonstrate that we do feel that this case has been
7 racially manipulated, and his testimony would
8 relate to the facts that I was attempting to
9 proffer in the opening statement which were facts
10 we intend to put on the stand, which includes the
11 fact that all the black jurors were excluded by the
12 prosecutor, even this one who is on there before
13 the Court put him back on. And so that's what I
14 wanted to add, and that's my intentions, to put
15 that on.

16 BY THE COURT: I'm not going to let you put
17 that on as proof. That is a matter of fact as to
18 what happened at the jury selection process which
19 the jury has already seen. I'm not going to allow
20 testimony for his opinion as to what went on in
21 that. That is not relevant.

22 BY MR. EVANS: And we move in limine to
23 eliminate him as a witness because none of that is
24 relevant; none of it is proper. This jury is not
25 even supposed to know he has already been
26 convicted, and now Mr. Lumumba has already told
27 them about another jury. It is improper--

28 BY MR. LUMUMBA: --I told who about another
29 jury?

1 BY MR. EVANS: It is improper to go into with
2 this jury how this jury was picked.

3 BY THE COURT: It is totally improper.

4 BY MR. EVANS: And I object and ask that he
5 not be allowed to testify.

6 BY THE COURT: I'm not going to allow him to
7 testify to that.

8 BY MR. LUMUMBA: Excuse me. Can I ask him at
9 what point--

10 BY THE COURT: --I will let you proffer that
11 testimony if you want to, but I'm not going to
12 allow him to testify before the jury.

13 BY MR. LUMUMBA: Yeah, that is fine, Judge.
14 But let me, and so there is no sense for him to
15 stay out then if he can't testify anyway. I'm just
16 making a record of that, but we would put him on.
17 But if you are not going to allow him to testify,
18 there is no sense for him to be out of the
19 courtroom.

20 BY THE COURT: Well, I don't know-- let me put
21 that in context. I don't know what he knows--

22 BY MR. LUMUMBA: --what he knows--

23 BY THE COURT: --personally as far as
24 mitigating factors and stuff like that go. But as
25 far as him testifying as to how this jury was
26 selected and his opinions about racial bias and
27 stuff like that, that is totally irrelevant. I'm
28 not going to allow him to testify to that, but if
29 you want to proffer that in the record, I will let

1 you do that at the appropriate time.

2 BY MR. LUMUMBA: Okay. But the point that I'm
3 making is that he would not be testifying to his
4 opinions. He would just be testifying to facts. I
5 will argue the case when I argue, but the fact
6 would be that the District Attorney excluded all
7 the blacks from the venire, and when they excluded
8 all the blacks from the venire, then they excluded
9 Mr. Cole, who then was only put back on the jury
10 because the Court put him back on. That would be--

11 BY THE COURT: --Well, of course--

12 BY MR. LUMUMBA: --because he was prejudiced--

13 BY THE COURT: --unfortunately, that is not all
14 the facts. The facts are that y'all had twelve
15 strikes, and you used eight of them, and you could
16 have gotten to another black if you had used some
17 more so--

18 BY MR. LUMUMBA: --No, that is not true. That
19 is not true.

20 BY THE COURT: You could have too. I have
21 already looked. That is why it's not going to be
22 before the jury because that is a question of law
23 for somebody else to decide.

24 BY MR. LUMUMBA: Uh-hum.

25 BY MR. HORAN: I think, first of all, his
26 question is if Mr. Bradley can stay in the
27 courtroom which is okay with us--

28 BY MR. EVANS: Which he can, yeah.

29 BY MR. HORAN: --if he doesn't put him on the

1 stand.

2 BY MR. EVANS: As long as he is not going to
3 testify.

4 BY THE COURT: Not if he comes in, he can't;
5 he can't testify at all.

6 BY MR. HORAN: To the proffer. We don't mind
7 him doing that on the proffer.

8 BY THE COURT: Huh?

9 BY MR. HORAN: The proffer; I think he wants
10 to make a proffer on that.

11 BY THE COURT: Okay. I'm going to let him do
12 that. Did you care about him being in court?

13 BY MR. HORAN: Huh? I got you now.

14 BY MR. LUMUMBA: I didn't hear you.

15 BY THE COURT: Well, I don't see where it
16 makes any difference on the proffer whether he is
17 in here or not.

18 BY MR. HORAN: That's right.

19 END BENCH CONFERENCE.

20 BY THE COURT: Ladies and gentlemen, we are
21 going to take just a short break here.

22 (FOLLOWING A MORNING RECESS ON MARCH 31, 1999,
23 THE SENTENCING PHASE CONTINUED IN OPEN COURT WITH
24 THE COURT, ALL COUNSEL, AND THE DEFENDANT PRESENT
25 BUT WITH THE JURY OUT FOR THE FOLLOWING:)

26 BY THE COURT: All right, sir.

27 BY MR. LUMUMBA: Yes, sir. My motion in
28 limine is to exclude any reference to the
29 accidental shooting which occurred with

1 relationship to Curtis Flowers and a young man. I
2 think it was some years prior to turning Curtis'
3 adulthood if I remember correctly. I only raise
4 this and I notice that, I think the prosecution
5 raised it at the last hearing, at the last trial in
6 the sentencing phase.

7 Now I know there was a discussion on the bench
8 on it. I was not total party to the discussion,
9 but I wanted for the record for the Court's ruling
10 to be clear so we will know what guidelines we are
11 proceeding on, and we will be able to proceed
12 thusly.

13 **BY THE COURT:** Okay. My ruling was one, they
14 have not, they have not introduced it in their case
15 in chief. The only way that they will be able to
16 get into it is if, in fact, the Defendant puts his
17 character in evidence to the effect that he has a
18 nonviolent background. If he puts that, if he puts
19 that in evidence, then they are entitled to respond
20 to that because I think, because you would open the
21 door on that if that happens to be the case.

22 **BY MR. LUMUMBA:** The only character that the
23 Defendant will put into evidence is the character
24 for truth and veracity.

25 **BY THE COURT:** That then he would not be able
26 to go into it if that's it. Okay, are we ready to
27 proceed?

28 **BY MR. LUMUMBA:** Yes, sir.

29 **BY MR. HORAN:** Yes, sir.

1 **BY THE COURT:** Okay.

2 BY MR. FREELON: We call Lola Flowers.

3 JURY ENTERS THE COURTROOM.

4 **BY THE COURT:** Ms. Flowers, you have been
5 sworn, have you not?

6 BY THE WITNESS: No, sir.

7 **BY THE COURT:** Okay, would you raise your
8 right hand.

9 **LOLA FLOWERS,**

10 a black female called to testify as a witness by the
11 Defendant in the Sentencing Phase, having first been duly
12 sworn, testified as follows, to-wit:

13 **BY THE COURT:** Have a seat up there, please.

14 And state your name for the record.

15 BY THE WITNESS: Lola Flowers.

16 DIRECT EXAMINATION BY MR. FREELON:

17 Q. Ms. Flowers, how are you doing this morning?

18 A. I don't know.

19 Q. Okay. Let me ask you what relationship, first of
20 all, are you to Curtis Flowers?

21 A. His mother.

22 Q. Okay. And at the present time, Ms. Flowers, where
23 are you living?

24 A. At 715 Dennis Street, Winona, Mississippi.

25 Q. And how long have you lived in Winona, Mississippi?

26 A. All my life.

27 Q. Did Curtis as a child grow up with you?

28 A. Yes, he did.

29 Q. So you are responsible for basically raising

1 Curtis?

2 A. Yes.

3 Q. As far as Curtis' reputation for telling the truth,
4 what type of person as far as his honesty is concerned would
5 you tell, would you think Curtis would be?

6 A. He is honest. I have always told them, don't make
7 no difference what they do, tell me the truth. I will whip
8 them for lying, but you know, if they told me the truth if
9 they did it, we talked about it, you know. He is basically a
10 truthful person.

11 Q. And as far as Curtis, has Curtis said anything to
12 you to make you disbelieve that he has been honest with you
13 up until today?

14 A. No.

15 Q. Okay. Let me ask; has this had an impact upon you,
16 Curtis getting arrested? Has it had an impact upon you
17 personally?

18 BY MR. EVANS: Your Honor, I object. The
19 rules are specifically clear from Wilcher v. State
20 and many other cases that this is not proper.

21 BY THE COURT: Sustained.

22 BY MR. FREELON: Let's approach.

23 BY MR. LUMUMBA: Yeah, let's approach so we
24 get an understanding with the Court.

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
26 THE JURY AS FOLLOWS:)

27 BY MR. LUMUMBA: What we propose to do, let
28 me-- I asked to come up here. Our proposal is to
29 put on the evidence which would show what impact it

1 would be on them if the Defendant was executed. I
2 think that is totally proper.

3 **BY THE COURT:** No, the Supreme Court has
4 specifically disallowed that. It's not relevant is
5 what they held.

6 BY MR. LUMUMBA: So they can put on people to
7 talk about--

8 **BY THE COURT:** --Sure. It's what the law is.
9 I didn't write it, but that is what it is.

10 BY MR. LUMUMBA: Well, I don't think that's
11 what it is, so I object. But secondly--

12 **BY THE COURT:** --Well, it is.

13 BY MR. LUMUMBA: Secondly, secondly, the whole
14 question of the testimony with relationship to the
15 impact on-- excuse me, whether she thinks Curtis
16 would be a productive person if allowed to remain
17 in society or allowed to live without being
18 executed.

19 **BY THE COURT:** I think she can testify to
20 that.

21 BY MR. EVANS: My objection is simply as the
22 Court has said, the Defendant is not entitled to
23 call family members to testify as to the impact his
24 death would have on their lives.

25 **BY THE COURT:** Right, but as far as her
26 testifying that he can make a contribution to
27 society or something like that, I don't have any
28 problem.

29 BY MR. FREELON: Is the law the impact that it

1 would have on her life or has had on her life or
2 both?

3 BY THE COURT: Both. Well, no; I'm sorry.
4 It's not. You can say what it has had.

5 BY MR. FREELON: That's the question I asked,
6 Your Honor.

7 BY THE COURT: Well, that's not the way I
8 understood it, but you can ask that.

9 BY MR. FREELON: My question is personally,
10 what is the impact it has had on your life.

11 BY THE COURT: Yeah, but you asked, didn't you
12 ask in the context of him being arrested and all?

13 BY MR. EVANS: Yeah.

14 BY THE COURT: You can't ask it that way. You
15 can ask for his, the fact that he lived with her,
16 her son, what impact that has had on her and their
17 relationship, those kind of things. But you can't,
18 you can't ask what the impact of this incident or
19 what the consequences of this incident might be,
20 what impact that will have on them.

21 BY MR. LUMUMBA: So he can ask what kind of
22 relationship she had with her son?

23 BY THE COURT: Sure.

24 BY MR. LUMUMBA: Okay. Well, proceed from
25 that.

26	END BENCH CONFERENCE
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27 BY MR. FREELON:

28 Q. Ms. Flowers, let me ask you this. What kind of
29 relationship did you have with Curtis and did Curtis have

1 with -- tell me something about your family, first of all.
2 He has any sisters and brothers?

3 A. Yes. He has four sisters and one brother.

4 Q. Is it close knit type of family?

5 A. Yes.

6 Q. What about the father? Is the father living?

7 A. He is living.

8 Q. Okay, what type of relationship did he actually
9 have with you as well as the rest of the family?

10 A. A good relationship. You know it was like, we all
11 -- it wasn't like mother and children. It was just like
12 sisters and brothers. We all just had a good relationship,
13 you know. It was just good. Curtis was, he was the fun of
14 the family, always joking and telling jokes. It was just, it
15 was a wonderful family.

16 Q. Would Curtis actually be a productive member of
17 society to the people around him?

18 A. Yes.

19 Q. If he is allowed to live?

20 A. Yes. I believe so. Because like Curtis always
21 help the elderly people, you know, carrying them grocery
22 shopping, mowing their yards, doing different things for
23 them. And we had another little man lived next door, old.
24 He would go and shave him, give his baths and stuff.

25 BY MR. FREELON: No further questions.

26 BY MR. EVANS: No questions, Your Honor.

27 BY THE COURT: Is she finally excused?

28 BY MR. FREELON: Yes.

29 BY THE COURT: Ms. Flowers, you may stay in

1 the courtroom if you would like.

2 WITNESS EXCUSED.

3 **BY THE COURT:** Who would you have next?

4 BY MR. FREELON: Archie Flowers, please.

5 **ARCHIE LEE FLOWERS,**

6 a black male called to testify as a witness by the Defendant
7 on the Sentencing Phase, having first been duly sworn,
8 testified as follows, to-wit:

9 **BY THE COURT:** State your name.

10 BY THE WITNESS: Archie Lee Flowers.

11 DIRECT EXAMINATION BY MR. FREELON:

12 Q. How are you doing this morning, Mr. Flowers?

13 A. Pretty good.

14 Q. Can you tell me what your relationship, if you
15 will, Mr. Flowers, to Curtis Flowers?

16 A. I'm his father.

17 Q. And did you participate in raising Curtis as a
18 child?

19 A. Right.

20 Q. What was, say during elementary, during high
21 school, what was-- you say you participated. What were some
22 of the things you would do to assist Curtis in raising Curtis
23 as a child?

24 A. I would try to help him in his class, you know.
25 When he asks me a question, if I knew, I would tell him.

26 Q. You say help him in his class, did he actually
27 attend school or did he--

28 A. Yeah, he went to school.

29 Q. And he finished high school there in Winona?

1 A. Right.

2 Q. What was the name of the high school that he
3 attended?

4 A. Winona High. I guess you call it Winona High.

5 Q. After he completed high school, what did Curtis do
6 after that point in time?

7 A. He started work.

8 Q. And when you say start work, did he continue to
9 work? Did he continuously hold employment with-- as far as
10 his employment is concerned, what type of person would you
11 say he is when it come to working?

12 A. He was a good person.

13 Q. Was Curtis active within the community?

14 A. Right.

15 Q. In what ways was he active within the community?

16 A. Well, we sang in a gospel group, and he is always,
17 was trying to find new songs to sing, you know. And if he
18 thought that I was doing wrong in the group, he would tell
19 me, say, "Pop," say "This song is wrong. We need to try to
20 rearrange it to something else," you know.

21 Q. In the gospel group, how long was Curtis actually
22 singing in this gospel group?

23 A. It has been quite a while. He was in his teens
24 when he started.

25 Q. And when is the last time you have known-- when is
26 the last time you can remember that Curtis actually
27 participated in a singing engagement?

28 A. Oh, he came from Texas one weekend to sing.

29 Q. This was in--

1 A. --when he was living in Texas.

2 Q. This was in 1996 or 1997?

3 A. What year probably was-- before they, you know,
4 arrested him.

5 Q. Okay. So he sang--

6 A. --It was the same year.

7 Q. Sometime late 1996 or probably early 1997 is
8 correct?

9 A. Right.

10 Q. So at that point in time he was still
11 participating--

12 A. Right.

13 Q. --in you all's singing engagement. What do you all
14 do at these singing engagements?

15 A. Like we go and churches get us to do a program for
16 them. We go do the program, you know, in different
17 churches. Sometimes they have, you know, building fund and
18 stuff like that. We go and do them a free program and stuff
19 like that.

20 Q. Was Curtis actually getting paid to sing?

21 A. No. No, no. Nobody gets paid. None of us get
22 paid. We just use that money for transit, you know, for gas
23 fare to go different places.

24 Q. So he would actually go with you all to gospel
25 meet-- this was gospel singing? Am I correct?

26 A. Right, gospel.

27 Q. And you all, this is not something that is your job
28 and you will be getting paid for. This is something--

29 A. --No.

1 Q. This is something he volunteered doing?

2 A. That's right.

3 Q. Okay. What type of relationship did you as a
4 father have with Curtis, do you have with Curtis, and do you
5 still have with Curtis, and have had with him from the past?

6 A. We always have had a good relationship.

7 Q. When you say good relationship, father-son
8 relationship?

9 A. That's right.

10 Q. What are some of the things that you and Curtis
11 would do together as father and son or brother and brother,
12 which one?

13 A. We used to go fishing together, stuff like that,
14 you know.

15 Q. And as far as Curtis with his-- did he have any
16 other brothers and sisters?

17 A. Yeah. He have four sisters.

18 Q. And what type of relationship did he have with
19 those brothers and sisters?

20 A. Real good. When he gets around there, you know, he
21 always, to me he tried to sing all the time, you know, every
22 -- he gets in his room, you know, he just sing, sing,
23 continue. He always try to teach the grand kids and stuff
24 like that.

25 Q. How is he with the children?

26 A. He is real good with the kids.

27 Q. In your opinion as far as reputation for telling
28 the truth, what is your opinion about Curtis growing up
29 throughout his life as far as his reputation for being a

1 truthful person?

2 A. He is truthful.

3 Q. And why would you say that? Why would you come to
4 that conclusion?

5 A. Because I just know him. He is just, he always--
6 he don't have, he didn't have no reason to tell us a lie no
7 way, you know. We always give him what he want, and he just,
8 he is just a good person.

9 Q. And do you still believe in Curtis here today?

10 A. I believe him.

11 Q. Would Curtis, do you think Curtis would be a
12 productive member to the people around him in society if he
13 was allowed to live?

14 A. I do.

15 BY MR. FREELON: No further questions.

16 BY MR. EVANS: No questions, Your Honor.

17 BY THE COURT: All right, Mr. Flowers, is he
18 finally excused?

19 BY MR. FREELON: Yes, he is.

20 BY THE COURT: You may stay in the courtroom.

21 WITNESS EXCUSED.

22 BY THE COURT: Who do you have next?

23 BY MR. FREELON: Jimmy Lewis Forrest.

24 (Witness enters the courtroom.)

25 BY THE COURT: Mr. Forrest, have you been
26 sworn?

27 BY THE WITNESS: No.

28 BY THE COURT: Would you raise your right
29 hand.

1 **JIMMY LEWIS FORREST,**
2 a black male called to testify as a witness by the Defendant
3 in the Sentencing Phase, having first been duly sworn,
4 testified as follows, to-wit:

5 **BY THE COURT:** Have a seat. State your name
6 for the record.

7 **BY THE WITNESS:** My name is Jimmy Lewis
8 Forrest.

9 DIRECT EXAMINATION BY MR. FREELON:

10 Q. Mr. Forrest, how are you doing this morning?

11 A. Fine. How you?

12 Q. Good. First of all, let me mention, Mr. Forrest,
13 are you from here?

14 A. No.

15 Q. Where are you from?

16 A. Winona, Mississippi.

17 Q. And is this your first day in Gulfport,
18 Mississippi?

19 A. Yes. Since the court, yeah.

20 Q. And you understand the reason you have been called
21 here to testify?

22 A. Yes.

23 Q. Okay, and you, did you actually, did you volunteer
24 to come down here to testify on behalf of Mr. Flowers?

25 A. I was called.

26 Q. Okay. And you are here as a friend of the family?

27 A. Yes, as a friend and also a relative.

28 Q. Okay. Good. And what relationship are you to
29 Curtis Flowers?

1 A. Second cousin.

2 Q. How long have you actually known Curtis?

3 A. All of his life.

4 Q. What is your, let me go back a little bit. What is
5 your occupation? What are you doing in Winona, Mississippi?

6 A. I work for the Department of Transportation.

7 Q. And is that your only source of employment, or do
8 you have any other occupation that you may do?

9 A. Right. I'm a minister, and then I sing with a
10 gospel group also.

11 Q. What is the name of this gospel group that you sing
12 with?

13 A. True Believers out of Jackson, Mississippi.

14 Q. And in your time in singing with this gospel group,
15 have you ever had an occasion to see Curtis out while you
16 were out there singing?

17 A. Yes. Several times, several.

18 Q. And what would he be doing when you see him?

19 A. He was singing.

20 Q. So and most of the time-- approximately how many
21 times do you think you have seen Curtis before just out
22 singing?

23 A. Well, he started when he was young, real young, and
24 I met him off, on several occasions, different programs.

25 Q. And as far as Curtis' reputation for being a
26 truthful person, what would you say as far as his reputation
27 for being a truthful person?

28 A. I have found him to be truthful in anything that I
29 ever known him to, in all of his doings, in all of his

1 singing.

2 Q. What kind of relationship do you have with Curtis
3 as well as Curtis and his family?

4 A. Well, me and his father were raised up together.

5 Q. And you would see Curtis on a continuous or--

6 A. --on a continuous basis, right.

7 Q. Let me ask you this question. Would, do you think
8 Curtis could be a productive person in this society to the
9 people around him if he was allowed to live?

10 A. Yes, I would.

11 BY MR. FREELON: No further questions.

12 BY MR. EVANS: No questions.

13 BY THE COURT: Is he finally excused?

14 BY MR. FREELON: Yes.

15 BY THE COURT: You are free to stay in the
16 courtroom.

17 WITNESS EXCUSED.

18 BY THE COURT: Who do you have next?

19 BY MR. FREELON: Nelson Forrest.

20 BY THE COURT: Nelson Forrest.

21 (Witness enters the courtroom.)

22 BY THE COURT: Mr. Forrest, have you been
23 sworn?

24 BY THE WITNESS: No, sir.

25 BY THE COURT: Would you raise your right
26 hand.

27 **NELSON FORREST,**

28 a black male called to testify as a witness by the witness by
29 the Defendant in the Sentencing Phase, having first been duly

IN THE SUPREME COURT OF MISSISSIPPI

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VOLUME 30 of 30

EXHIBIT _____

ELECTRONIC DISK _____

Case #1999-DP-01369-SCT

COURT APPEALED FROM : Circuit Court

COUNTY : Montgomery

TRIAL JUDGE : C. E. Morgan III

.....
Curtis Giovanni Flowers v. State of Mississippi

.....
Charlotte B. Williams, Clerk

.....
TRIAL COURT # : 97-372

1 sworn, testified as follows, to-wit:

2 BY THE COURT: Would you have a seat up here,
3 please, sir. Would you state your name for the
4 record.

5 BY THE WITNESS: Nelson Forrest.

6 DIRECT EXAMINATION BY MR. FREELON:

7 Q. Mr. Forrest, can you-- first of all, where are you
8 living at at the present time?

9 A. Winona, Mississippi.

10 Q. Okay, do you actually know Curtis Flowers?

11 A. Yes, sir. I do.

12 Q. And how did you become, or how do you know Curtis
13 Flowers?

14 A. Through his family, friend of the family.

15 Q. Approximately how long-- you say through his family
16 and friends of the family. So do you have a relationship
17 with the family as well?

18 A. Yes.

19 Q. What kind of relationship do you have with the
20 family?

21 A. I am his father's second cousin.

22 Q. What kind of relationship as far as personal
23 relationship do you have with Curtis?

24 A. I would say big brother, little brother
25 relationship with Curtis.

26 Q. And over the years, have you come in contact with
27 Curtis on a regular basis?

28 A. Probably three times a week roughly.

29 Q. In those three times a week, and I assume that's

1 quite a bit of times, as far as Curtis' reputation for being
2 a truthful person, would you say he has a reputation for
3 being truthful?

4 A. Yes.

5 Q. Let me ask you to go back a little bit. What is
6 your employment, first of all? What type of employment do
7 you have?

8 A. I work for the Mississippi Military Department at
9 Camp McCain.

10 Q. Do you have any other employment?

11 A. I'm a pastor at United Methodist Church, and I am a
12 member of Mississippi National Guard.

13 Q. Now as this pastor of United Methodist Church, do
14 you on occasion have an opportunity to, have you seen Curtis
15 come to your church?

16 A. Well, I have been in church with him on singing
17 programs a lot.

18 Q. Now when you say on singing programs, what would
19 Curtis be doing when you would be there for those singing
20 programs?

21 A. Oh, he would sing in a gospel group, and I also
22 sing in a gospel group. He would be singing in the group
23 with his father.

24 Q. And was this on a regular basis as far as you could
25 tell?

26 A. Yes. Yes.

27 Q. Okay, I just have one other question for you. Do
28 you think that Curtis would be a productive member or a
29 productive person to others, people in society if he was

1 allowed to live?

2 A. Yes, I do.

3 BY MR. FREELON: No further questions.

4 BY THE COURT: Any questions?

5 BY MR. EVANS: No, sir.

6 BY THE COURT: Is he finally excused?

7 BY MR. FREELON: Yes, he is.

8 BY THE COURT: You may stay in the courtroom.

9 WITNESS EXCUSED.

10 BY MR. FREELON: We have Connie Moore.

11 (Witness enters the courtroom.)

12 BY THE COURT: Ms. Moore, have you been sworn
13 in?

14 BY THE WITNESS: No.

15 BY THE COURT: Would you raise your right
16 hand?

17 CONNIE MOORE,

18 a black female called to testify as a witness by the
19 Defendant in the Sentencing Phase, having first been duly
20 sworn, testified as follows, to-wit:

21 BY THE COURT: Have a seat up here. State your
22 name for the record, please.

23 BY THE WITNESS: Connie Moore.

24 DIRECT EXAMINATION BY MR. LUMUMBA:

25 Q. Good morning, Ms. Moore.

26 A. Good morning. Could you say for the ladies and
27 gentlemen of the jury, please, your name one more time,
28 please.

29 A. Connie Moore.

- 1 Q. Ms. Moore, where do you live? Where do you live
- 2 now?
- 3 A. 745 South Church Street.
- 4 Q. And what city is that in?
- 5 A. Winona.
- 6 Q. How long have you lived in Winona?
- 7 A. About 20 years.
- 8 Q. About 20 years?
- 9 A. Yes, sir.
- 10 Q. Okay, do you have family there?
- 11 A. Yes, sir.
- 12 Q. What does that consist of?
- 13 A. Sir?
- 14 Q. Who is in your family?
- 15 A. My kids, my parents.
- 16 Q. Okay, and how many children do you have?
- 17 A. Four.
- 18 Q. Tell us the names of your children?
- 19 A. Marcus, Lemarcus, Brittany, and Marissa.
- 20 Q. Connie, or Ms. Moore, could you tell me, please, if
- 21 you are employed at this time?
- 22 A. Yes, sir.
- 23 Q. What is it that you do?
- 24 A. Sand. I work at Krueger.
- 25 Q. Okay, what do you do? I'm sorry.
- 26 A. Sanding.
- 27 Q. Sanding?
- 28 A. Yes, sir.
- 29 Q. Okay. And how long have you been working there?

1 A. A year.

2 Q. Now Ms. Moore, by the way, do you know a person by
3 the name of Curtis Flowers?

4 A. Yes, sir.

5 Q. And how do you know Curtis?

6 A. He's my boyfriend.

7 Q. Do you know what kind of-- did he work at all while
8 you were together?

9 A. Yes, sir.

10 Q. And what is it that he did?

11 A. Well, he worked at Richardson Brothers. And he
12 worked at Morris Brothers. And let's me see what else.
13 Tardy Furniture. He worked at different places.

14 Q. Okay. Was he employed most of the time?

15 A. Yes, sir.

16 Q. Now Ms. Moore, I would like to first of all ask a
17 few questions, and then I'm going to ask you some questions
18 about Curtis directly.

19 A. Okay.

20 Q. Do you recall police officers coming to your house
21 and getting a shoe box from your house?

22 A. Yes, sir.

23 Q. And who gave them the shoe box?

24 A. I did.

25 Q. Okay, I'm going to show you what is marked as an
26 exhibit for trial in this matter as number 61. And I don't
27 know if you can identify this one way or the other as the
28 exact shoe box, but I'm going to ask you whether it was a
29 shoe box similar to that?

1 A. Yes, sir.

2 Q. I'm sorry?

3 A. Yes, sir.

4 Q. And can you tell the ladies and gentlemen of the
5 jury, could you look over there and tell them, please, how
6 did that shoe box-- first of all, how did they get it? Did
7 they come take it out of your house, or did you give it to
8 them or what?

9 A. I gave it to them.

10 Q. And could you tell them, please, who that shoe box,
11 how it got to be in your house?

12 A. Well, I bought it, my son some shoes. That's why
13 it was there.

14 Q. What was your son's name?

15 A. Marcus.

16 Q. Okay, when did you do this?

17 A. In November of '95.

18 Q. Now let me ask you this. Where were the shoes,
19 what were you using the box for at the time that they came in
20 and took it?

21 A. I had Christmas bows in it.

22 Q. What?

23 A. Christmas bows.

24 Q. Christmas bows?

25 A. Yes, sir.

26 Q. Can you kind of keep your voice up a little bit.
27 Make sure they can hear you, okay. And so it was Christmas
28 bows in it the day that the officers came for it; is that
29 correct?

1 A. Yes, sir.

2 Q. Where were the shoes that were in it, if you know?

3 A. No, sir.

4 Q. And where was the-- did Marcus wear the shoes?

5 A. Yes, sir.

6 Q. Was he living with you at the time that they came
7 to get the box?

8 A. No, sir.

9 Q. So this would have been about what month that they
10 came to get the box?

11 A. I think it was August.

12 Q. About August?

13 A. If I'm not mistaken.

14 Q. Okay, that would have been August of '96; is that
15 correct?

16 A. Yes, sir.

17 Q. Okay, so did you-- now Marcus feet, how did, how
18 were they? I mean in terms, how old was he about that time?

19 A. 11 years old.

20 Q. How was his feet?

21 A. He wore a 10 1/2.

22 Q. Did they grow slowly?

23 A. Well, he, now he is wearing a 12 1/2.

24 Q. And actually, now he wears about a 13, doesn't he?

25 A. A 12 1/2.

26 Q. 12 1/2, okay. Is he kind of a-- is he kind of a
27 big fellow for his age?

28 A. Yes, sir.

29 Q. Okay, kind of tall?

1 A. Yes, sir.

2 Q. Okay, what do they call him? What is his nickname?

3 A. Big Red.

4 Q. Okay. To your knowledge did Curtis ever wear those
5 shoes?

6 A. No, sir.

7 Q. Now were those shoes in your residence as of August
8 of 1996?

9 A. No, sir.

10 Q. The other thing I would like to ask you, please,
11 Ms. Moore, is this. In terms of living with Curtis, what
12 kind of relationship did you guys have?

13 A. We had a great relationship.

14 Q. Why do you say that?

15 A. Well, we always did things together, great
16 understanding with each other and everything.

17 Q. And how many, how long were you actually, how long
18 have you actually been together with Curtis?

19 A. Six years.

20 Q. And in that six years do you have an opinion as to
21 what Curtis' reputation is for being honest and truthful?

22 A. Yes, sir.

23 Q. And what kind of reputation is that?

24 A. He is an honest man.

25 Q. And could you keep your voice up a little bit if
26 you can, please?

27 A. Okay.

28 Q. And the final question I would have for you, Ms.
29 Moore; if Curtis, if you think that Curtis would be a

1 productive member of whatever society he is in or the people
2 around him wherever he is if he continues to live?

3 A. Yes, sir.

4 Q. And why do you say that?

5 A. Because he enjoy kids and they would enjoy being
6 around him, and he enjoy singing and writing.

7 Q. Does he make people feel good who are around him?

8 A. Yes, sir.

9 Q. Does he help people who are around him?

10 A. Yes, sir.

11 Q. And has that always been him as long as you have
12 known him?

13 A. Yes, sir.

14 BY MR. LUMUMBA: Excuse me for a second,
15 Judge, please.

16 (Pause while Mr. Lumumba confers with his
17 client and with Mr. Freelon.)

18 BY MR. LUMUMBA: I have no further questions.

19 BY MR. EVANS: Very briefly, Your Honor.

20 CROSS-EXAMINATION BY MR. EVANS:

21 Q. Ms. Moore.

22 A. Yes, sir.

23 Q. You wouldn't come in here and lie for Curtis, would
24 you?

25 A. No, sir.

26 Q. Are you familiar with the fact that both Patricia
27 Hollman and Mary Sue Moore have testified they had seen--

28 BY MR. LUMUMBA: --Objection--

29 BY MR. EVANS:

1 Q. --Curtis wearing Fila tennis shoes--

2 BY MR. LUMUMBA: --Objection. Can he, does he
3 keep talking? I have been told not to do that.
4 Objection.

5 BY THE COURT: Well, no. Okay, what is your
6 objection?

7 BY MR. LUMUMBA: My objection is that her
8 familiarity with another witness' testimony, as I
9 was previously told, is irrelevant to this
10 proceeding. Can we approach?

11 BY THE COURT: It is pitting one against the
12 other. Sustained.

13 BY MR. LUMUMBA: And secondly, I would like to
14 object and ask that it be stricken what he asked
15 and particularly the misstatement that Mary Sue
16 Moore said that Curtis was wearing any kind of
17 shoes like that. She specifically denied that.

18 BY THE COURT: Well, I didn't hear him ever
19 say that because you objected in the middle of his
20 question. I don't think he got that out, so the
21 objection is sustained. Move ahead, Mr. Evans.

22 BY MR. EVANS: I don't have any questions of
23 this witness, Your Honor.

24 BY THE COURT: Okay, is she finally excused?

25 BY MR. EVANS: Yes, sir.

26 BY THE COURT: I'm sorry. Have you got any
27 other questions?

28 BY MR. LUMUMBA: Uh--

29 BY MR. EVANS: Since I didn't ask any, I

1 wouldn't--

2 **BY THE COURT:** --Well, that's right. You
3 didn't, did you? You didn't get one out. Okay,
4 is she finally excused?

5 BY MR. LUMUMBA: Yes, sir.

6 **BY THE COURT:** All right. You are free to
7 stay in the courtroom or leave, Ms. Moore.

8 WITNESS EXCUSED.

9 **BY THE COURT:** Who will you have next?

10 BY MR. LUMUMBA: Judge, we don't have any
11 further witnesses at this time.

12 DEFENDANT RESTS ON SENTENCING PHASE.

13 **BY THE COURT:** Okay. The State, I assume the
14 State has got no other witnesses?

15 BY MR. EVANS: The State wishes to put no one
16 else on.

17 BOTH SIDES FINALLY REST.

18 **BY THE COURT:** Ladies and gentlemen, I have
19 got to finish up the instructions to give you, so
20 I'm going to give you a break at this time. I have
21 about got that done, so we will be back shortly,
22 and then we will allow the argument to proceed.
23 And then as yesterday, we will turn it over to you
24 to decide.

25 JURY LEAVES THE COURTROOM.

26 **BY THE COURT:** After we discussed the
27 instructions earlier, there are two or three more
28 that I have added. They are the ones that you
29 generally give like doing the foreman and stuff

1 like that, the administrative instructions that I
2 think need to be in there.

3 BY MR. EVANS: Yes, sir.

4 BY THE COURT: If y'all will get all those
5 instructions together, I will be back in a minute,
6 we will make sure we have got them.

7 (FOLLOWING A BRIEF RECESS, COURT RECONVENED
8 OUT OF THE PRESENCE OF THE JURY BUT WITH ALL
9 COUNSEL AND THE DEFENDANT PRESENT FOR THE FURTHER
10 CONSIDERATION OF INSTRUCTIONS AS FOLLOWS:)

11 BY THE COURT: Mr. Lumumba, I have got a
12 couple more you haven't seen here.

13 (Instructions C-2 and C-3 were handed to
14 Defense Counsel.)

15 FURTHER CONSIDERATION OF INSTRUCTION SS-1: BY MR.
16 HORAN: You want "the Defendant" changed in every
17 instruction?

18 BY THE COURT: You don't have to do it. If
19 you want me to, I will.

20 BY MR. HORAN: No, I will do it. I just want
21 to make sure even in the mitigating thing and the counting
22 process and all those instructions?

23 BY THE COURT: You don't have to put his whole
24 name, but I think after the first-- you can put his whole
25 name at the first and after that, it can be "Mr. Flowers" if
26 you want to.

27 BY MR. HORAN: Can I put down "The Defendant,
28 Mr. Curtis Flowers" first, and after that make no reference
29 to the Defendant at all and put and go to Flowers?

1 **BY THE COURT:** And do what?

2 BY MR. HORAN: After the first one, "You have
3 found the Defendant, Curtis Giovanni Flowers, guilty of the
4 crime"--

5 **BY THE COURT:** Okay.

6 BY MR. HORAN: Then after that, we won't make
7 any more reference to the Defendant.

8 **BY THE COURT:** Right.

9 BY MR. HORAN: Got it.

10 **BY THE COURT:** Mr. Horan, these are the
11 additional ones I had. All I'm waiting on is that one.

12 Motion of Defendant concerning prior instructions: BY
13 MR. LUMUMBA: Yes, Judge. We would want to request that the
14 identification and the circumstantial evidence instruction be
15 reread for the jury in this phase too, the same one that you
16 read from the trial phase.

17 **BY THE COURT:** On what basis?

18 BY MR. LUMUMBA: On the basis they have got to
19 make the same kind of determination. They have got to go
20 back and they have to make a determination on whether he did
21 kill, intended to kill, attempted to kill or contemplated
22 that lethal force would be used. They have got to make a
23 determination on whether, not only whether there was a
24 robbery occurred but whether he was involved with the
25 robbery. All of those kinds, that's, those things have to be
26 made in this phase, and so they have got to be guided by the
27 same principle. So I would ask that all of those
28 instructions be read. In fact, I guess I am really going to
29 ask that all the instructions be reread. But I am

1 particularly focused on those.

2 BY MR. EVANS: Your Honor, in response to
3 start with, we are through with that phase. The jury has
4 already found him guilty. None of that is relevant. On this
5 phase the burden of proof is different. In this phase the
6 burden of proof is beyond a reasonable doubt. There is no
7 circumstantial question in the phase, and these are the only
8 instructions that are proper in this phase.

9 BY MR. LUMUMBA: I think beyond a reasonable
10 doubt in any place where you are dealing with, when you are
11 dealing with circumstantial evidence only, the burden of
12 proof is the same. I don't know the case he is talking about
13 that says that it is different.

14 BY MR. EVANS: There has never been a case
15 that said it is any different than beyond a reasonable doubt
16 in this phase.

17 BY THE COURT: Okay. I hold that the
18 circumstantial is not part of the burden of proof in this
19 case. The circumstantial burden is not.

20 BY MR. LUMUMBA: How about the rest of the
21 instructions I am requesting, like identification and the
22 rest of the instructions? If you don't want to read--

23 BY THE COURT: --No, sir. The jury has
24 already made those decisions, decided those facts. This is
25 only the question of what sentence to impose.

26 INSTRUCTION NO. C-2: BY MR. LUMUMBA: I think the Court
27 had asked if we could approve another instruction the Court
28 came up with. That instruction was instructing them to
29 include all the proofs from the former trial in this

1 hearing. I think that I would object to that for the same
2 reason I objected to the prosecution being able to bring in
3 the proofs to start off with, and an additional reason I
4 would object, the Court has allowed the proofs to come in and
5 just denied me the instructions that go with the proof. So
6 for that reason, those are my two reasons I object.

7 **BY THE COURT:** That objection is overruled.

8 (Instruction No. C-2 was given as Sentencing
9 Instruction No. 2, and Instruction No. C-3 was given as
10 Sentencing Instruction No. 3.)

11 (Pause until revised instruction SS-1 is retyped.)

12 INSTRUCTION NO. SS-1: **BY THE COURT:** Okay. Let me see
13 if this number 2 under mitigating factors is the way you told
14 it to me. "Any other matter, any other aspect of Mr.
15 Flowers' character or record brought to you during the trial
16 of this cause which you, the jury, deemed to be mitigating on
17 behalf of Mr. Flowers."

18 **BY MR. LUMUMBA:** (Mr. Lumumba nods his head.)

19 **BY THE COURT:** Okay. (Pause while Court reads
20 further.) I don't think this is correct.

21 **BY MR. EVANS:** Which one?

22 **BY THE COURT:** The first one. Let me read it
23 again. (Pause) Yeah, I think it does. I read it wrong.
24 Have you looked at this since they have put Mr. Flowers' name
25 in there?

26 **BY MR. LUMUMBA:** No.

27 **BY THE COURT:** All right. As far as I know,
28 that's the only change, and I think it's in there every place
29 there was "the Defendant."

1 (Instruction No. SS-1 handed to Mr. Lumumba.)

2 **BY THE COURT:** Let me ask you this while you
3 are doing that and while I'm getting these things filed and
4 all like that; how much time do y'all want to argue?

5 BY MR. EVANS: I would think maybe 45 minutes.

6 BY MR. LUMUMBA: I need about an hour.

7 **BY THE COURT:** Okay. We will do an hour. So
8 that will put us about where we were talking about. You want
9 to go ahead and let them order?

10 (Pause while Mr. Lumumba reads the instruction
11 and then hands it to the Court.)

12 BY MR. LUMUMBA: Excuse me, Judge. Can I see
13 it one more time?

14 **BY THE COURT:** Uh-hum.

15 (Pause.)

16 BY MR. LUMUMBA: I do have an objection to
17 this instruction. I'm sorry; I missed it before. On the
18 last page of that instruction right above where it has the
19 line that the foreperson signs or could sign for the first
20 time there, it says that, "We, the jury, find" essentially
21 that the aggravating circumstances are not, you know, do
22 exist and that they are not outweighed by the mitigating
23 circumstances. And further it says without really any other
24 kind of sentence or anything, it goes on to say, and we feel
25 that the death penalty should be imposed. The impression
26 left by the way that that is put together, the way that the
27 form reads is that if they find that the aggravating
28 circumstances are not outweighed by the mitigating
29 circumstances, then they should impose the death penalty.

1 That is not the law. The law is that even if they make that
2 determination, that they are not outweighed by the mitigating
3 circumstances. They can still go to either one of the
4 following two verdicts which is life or life without parole.
5 So I don't want in any way the jury believing that reaching a
6 finding that they can impose the death penalty is the same as
7 reaching a finding that they must impose the death penalty.

8 So what I would suggest is that what we do is break
9 that paragraph up. Allow it to rest-- in that paragraph
10 where it says, we find that the mitigating outweigh the
11 aggravating, and then allow the foreperson to sign it, and
12 then go down below that and say, We further find that we
13 impose the death penalty or We further find that we impose
14 life or We further find that we will impose life without
15 parole. I think that that is important because the way it
16 reads right now it appears that merely by finding that the
17 aggravating are not outweighed by the mitigating, they
18 should, in fact, impose the death penalty. I think that is
19 an inappropriate way the form is put together; not
20 necessarily specifically what it says, but the way the form
21 has been put together.

22 BY MR. EVANS: Your Honor, this instruction
23 has been approved in many capital cases, and the Courts have
24 basically suggested that this form be used. That's why we
25 try to use this exact form in every case.

26 BY THE COURT: This is the one that the
27 Supreme Court tells me to use. So therefore I'm going to
28 give it, and it's in that form.

29 Instruction SS-1 is given as Instruction Number

1. Sentence Instruction Number 2 is given. Sentence Instruction-- and I will give it as C-2. Sentence Instruction Number 3, which is C-3, is given. Sentence Instruction Number 4, which is C-4, is given. Sentence Instruction Number 5, which is C-5, is given. Sentencing Instruction Number 6, which is DS-1, is given. And the final thing is a form for them to enter their verdict on. If you will get those filed for me.

(FOLLOWING A BRIEF RECESS TO GET THE INSTRUCTIONS FILED, PROCEEDINGS CONTINUED IN OPEN COURT WITH THE COURT, ALL COUNSEL, AND THE DEFENDANT PRESENT:)

BY THE COURT: I am about to bring the jury in. The jury has requested that the lawyers address them from the podium, so I'm going to expect y'all to address them from the podium. Also, I will not allow either side to address individual jurors at all. You can address the panel as a whole and make your argument, but there will be no singling out any juror in your argument.

BY MR. LUMUMBA: Just a minute, Judge. I have an objection for that, and I want to know the reason for that.

BY THE COURT: Well, because you singled out one when you tried to do your opening statement, and that is impermissible, and I'm not going to allow you to do that. The law is clear; there are numerous cases about you are not allowed to single

1 out jurors and to intimidate them in any way.

2 BY MR. LUMUMBA: Well, did I intimidate them?

3 BY THE COURT: I don't know whether you did.

4 BY MR. LUMUMBA: Is that a request from the
5 jury?

6 BY THE COURT: No, it's not.

7 BY MR. LUMUMBA: Okay, well, then secondly,
8 where does the request come from that we do not
9 approach the podium? That is something that was
10 brought--

11 BY THE COURT: --They sent me a message
12 through the bailiffs.

13 BY MR. LUMUMBA: Yeah, who sent you a
14 message?

15 BY THE COURT: The jury.

16 BY MR. LUMUMBA: Which one?

17 BY THE COURT: I don't know.

18 BY MR. LUMUMBA: Well, I think we should poll
19 and see, you know, if that is a message that is
20 coming from the jury as a whole or whether that is
21 coming from a particular juror.

22 BY THE COURT: Well, I'm not going to poll
23 them. I am just telling you that is what the
24 instructions of the Court are. You must address
25 them from the podium.

26 BY MR. LUMUMBA: Why?

27 BY THE COURT: Because that is the ruling of
28 the Court.

29 BY MR. LUMUMBA: Okay, why is that the ruling

1 of the Court? Because it is coming from the jury?
2 I am just trying to be clear.

3 **BY THE COURT:** That's the way I want it done,
4 Mr. Lumumba.

5 **BY MR. LUMUMBA:** Well, I think it's because
6 this request has been made-- the Court previously
7 requested, indicated there was a request being made
8 from the jury. If that is the case, then I would
9 also, I would ask that the jurors be voir dired at
10 this point in time. It appears that something is
11 bothering the jurors, and if they have already
12 reached a conclusion as to how they should sentence
13 or they have reached some kind of, they have some
14 kind of problems with some of the personnel who are
15 in the case, myself included or anybody else, then
16 that needs to be brought out right now because if
17 they have developed some kind of biases or
18 prejudices for whatever reason, then I don't think
19 that they would be qualified to continue with the
20 deliberation of this case.

21 So and secondly, I will bring into the record
22 now that at some point before the first trial was
23 over, before the actual trial was over, the trial
24 in this matter right here that has been occurring
25 in the last week or so, the Court sent a message to
26 me that some juror was saying we were sending a
27 signal to the jury or to the witness; I can't
28 remember who it was, because I made this
29 expression, (NOTE: Mr. Lumumba does a hand

1 gesture.) which is an expression I do all the
2 time. And then at some other point they were
3 saying that Mr., my investigator, Mr. Irvin
4 Bradley, was making some kind of signal by doing
5 this. To me, these are exaggerated kinds of
6 impressions which maybe some jurors have which is
7 also indicative that they shouldn't have been
8 sitting on the first case, and they shouldn't be
9 sitting in this case. I think that-- at this
10 sentencing hearing. As far as Mr. Bradley is
11 concerned, it never occurred. As far as I am
12 concerned, I do this all the time. (NOTE: Makes
13 hand gesture.) I don't know if I did it in front of
14 the jury or not, but I do this all the time on a
15 continuous basis.

16 So I think that we need to screen the jury and
17 to see if these biases, you know, exist. Once
18 again, I point out that the very juror who said
19 that she had problems with mixed marriages and she
20 expressed some other kind of problem under the
21 question which says, Do you have any prejudices?
22 We requested an individual voir dire on that juror,
23 and the Court denied that request. And it now
24 turns out that that juror winds up being the fore-
25 person.

26 And to make the record clear in case we didn't
27 make it clear at the bench, and I did make it clear
28 actually when we were passing that juror, that I
29 would have excluded that juror. I would have

1 excluded many of the other jurors except for the
2 fact that in doing so, we would have run out of
3 challenges long-- and the Court is absolutely
4 incorrect. We never would have had enough
5 challenges to make it to the black jurors that
6 still remained if the prosecution hadn't stricken
7 completely. But we would have created-- and in
8 addition to that, we would have wound up picking up
9 the juror who we complained about. We would have
10 run out of challenges before we could have gotten
11 rid of the juror that we complained about who had
12 went outside of this courtroom, talked in the hall,
13 who said that he would give the death penalty, had
14 kind of an eye for an eye, tooth for tooth view on
15 the death penalty, and several other jurors who had
16 that same kind of view.

17 And given any other necessity of clarifying
18 the record on that issue, we will do so. So our
19 stopping had only to do with the fact that we
20 didn't want to wind up with jurors who had
21 professly said things which were adverse to the
22 case and then being trapped into getting them where
23 we had run out of challenges. We counted our
24 challenges very carefully, and that was absolutely,
25 absolutely the case. So that, and then everybody
26 else we excluded, we excluded people that had
27 convicted people two or three times and things of
28 that nature. And just to also show that our
29 exclusions weren't just based upon race, we asked

1 that a woman be challenged for cause--

2 **BY THE COURT:** --I understand all that, and
3 you can make that argument on Motion for New
4 Trial. All I'm telling you is you cannot
5 individually address jurors. You must address the
6 panel. That is clear law. I mean that has been
7 the law so long--

8 **BY MR. LUMUMBA:** --Well, no, but I have raised
9 this question now, and I think that we need to voir
10 dire the jurors to see if they have problems with
11 the people in the case. So if they have already
12 made up their minds, if they have got a problem
13 which makes them unable to be fair, we need to find
14 out. And it appears that they do because of the
15 instances that the Court has reported to me that
16 they complained, and I would like to know for the
17 record who was that that complained about the,
18 basically the motions or whatever you call it, the
19 gestures, and who is that who complained about Mr.
20 Bradley, who has said nothing to them, just been
21 sitting in back of me. And I would like to know
22 who those jurors are, so we would like to voir dire
23 them.

24 **BY THE COURT:** We are not going to do that.
25 We are going to proceed with the argument. You can
26 bring the jury in.

27 JURY ENTERS THE COURTROOM.

28 **BY THE COURT:** Ladies and gentlemen, I am
29 about to give you the instructions for this phase

1 of the trial. As in the first phase, you will be
2 entitled to take these instructions back to the
3 jury room with you in considering your verdict.
4 The first instruction that I'm going to read to you
5 is a long instruction. It will tell you how,
6 whatever verdict that you come up with, it will
7 tell you how to fill out the form that reflects
8 that verdict. You are going to need to read it
9 carefully because it must be followed as it is
10 stated out. It is important that you do what this
11 instruction says whatever you do in this case.

12 "You have found Curtis Giovanni Flowers
13 guilty of the crime of capital murder. You must
14 now decide whether Curtis Giovanni Flowers will be
15 sentenced to death or life imprisonment without
16 parole. In reaching your decision, you may
17 objectively consider the detailed circumstances of
18 the offense for which Curtis Giovanni Flowers was
19 convicted, and the character and record of Curtis
20 Giovanni Flowers himself. You should consider and
21 weigh any aggravating and mitigating circumstances,
22 as set forth in this instruction, but you are
23 cautioned not to be swayed by mere sentiment,
24 conjecture, sympathy, passion, prejudice, public
25 opinion, or public feeling.

26 To return the death penalty in this case, you
27 must first unanimously find from the evidence
28 beyond a reasonable doubt that one or more of the
29 following facts existed: That Curtis Giovanni

1 Flowers actually killed Derrick Stewart; That
2 Curtis Giovanni Flowers attempted to kill Derrick
3 Stewart; That Curtis Giovanni Flowers intended the
4 killing of Derrick Stewart take place or; That
5 Curtis Giovanni Flowers contemplated that lethal
6 force" should be employed-- "would be employed.

7 Next to return the death penalty, you must
8 find the mitigating circumstances which tend to
9 warrant the less severe penalty of life
10 imprisonment without parole do not outweigh the
11 aggravating circumstances which tend to warrant the
12 death penalty.

13 Consider only the following elements of
14 aggravation in determining whether the death
15 penalty should be imposed: The capital offense was
16 committed for pecuniary gain during the course of
17 an armed robbery; Curtis Giovanni Flowers knowingly
18 created a great risk of death to many persons.

19 You must unanimously find, beyond a reasonable
20 doubt, that one or more of the preceding
21 aggravating circumstances exist in this case to
22 return the death penalty. If none of these
23 aggravating circumstances are found to exist, the
24 death penalty may not be imposed, and you shall
25 mark the following verdict on the attached form.

26 'We, the jury, find that Curtis Giovanni
27 Flowers should be sentenced to life imprisonment
28 without parole.'

29 If one or more of the above aggravating

1 circumstances is found to exist beyond a reasonable
2 doubt, then each of you must consider whether there
3 are mitigating circumstances which outweigh the
4 aggravating circumstances. Consider the following
5 elements of mitigation in determining whether the
6 death penalty should not be imposed:

7 Whether Mr. Flowers has no significant history
8 of prior criminal activity; any other matter, any
9 other aspect of Mr. Flowers' character or record
10 brought to you during the trial of this cause which
11 you, the jury, deemed to be mitigating on behalf of
12 Mr. Flowers; Mr. Flowers' involvement in religion
13 and spirituality to the benefit of himself and
14 others.

15 If you individually find from the evidence
16 that one or more of the preceding elements of
17 mitigation exist, then you must consider whether it
18 outweighs or overcomes aggravating circumstances
19 you previously found. In the event that you find
20 that the mitigating circumstance, circumstances do
21 not outweigh or overcome the aggravating
22 circumstances, you may impose the death sentence.
23 Should you find the mitigating circumstances
24 outweigh or overcome the aggravating circumstances,
25 you shall not impose the death sentence.

26 The verdict you return must be written on the
27 attached form and signed by the foreman. Your
28 verdict should be written in one of the following
29 forms: 'We, the jury, unanimously find from the

1 evidence beyond a reasonable doubt that the
2 following facts existed at the time of the
3 commission of the capital murder charged.'" And
4 there are blanks provided. You are to "list or
5 itemize all facts found, if any, from the list
6 under Section A of this instruction which you
7 unanimously agree exist in this case beyond a
8 reasonable doubt.

9 Next we, the jury, unanimously find that the
10 aggravating circumstances of:" - and you are here
11 to "list or itemize all of the aggravating
12 circumstances presented in Section B of this
13 instruction which you unanimously agree exist in
14 this case beyond a reasonable doubt."

15 After you have listed those, it is to "exist
16 beyond a reasonable doubt and is sufficient to
17 impose the death penalty and that there are
18 insufficient mitigating circumstances to outweigh
19 the aggravating circumstances, and we further find
20 unanimously that Curtis Giovanni Flowers should
21 suffer death."

22 There is a line for the foreman of the grand
23 jury-- of the jury to sign.

24 Then you can find, "We, the jury, find that
25 Curtis Giovanni Flowers should be sentenced to life
26 imprisonment without parole." There is a line for
27 the foreman to sign there.

28 "We, the jury, are unable to agree
29 unanimously on punishment." And there is a line

1 for the foreman to sign there.

2 "The Court instructs the jury that at this
3 phase of the trial conducted for the purpose of
4 determining the sentence to be imposed upon the
5 Defendant, the State and the Defendant may elect to
6 stand on the testimony and evidence introduced
7 during the first or guilt phase of the trial, or
8 the parties may elect to introduce additional
9 testimony and evidence as to matters relating to
10 any of the aggravating or mitigating circumstance.
11 In reaching your verdict, you may consider the
12 testimony and evidence presented during the first
13 phase of the trial together with the testimony and
14 evidence, if any, relating to any of the
15 aggravating or mitigating circumstances presented
16 for your consideration during the second or
17 sentencing phase of the trial.

18 The Court instructs the jury that for this
19 phase of the trial, you shall select from among
20 yourselves a foreman. In the event that you
21 unanimously find that the defendant shall suffer
22 the penalty of death, the foreman shall cause the
23 verdict to be written in the form and manner
24 prescribed by law, and the foreman shall thereafter
25 affix his or her signature to the verdict.

26 The Court instructs the jury that it must be
27 emphasized that the procedure that you must follow
28 is not a mere counting process of a certain number
29 of aggravating circumstances versus the number of

1 mitigating circumstances. Rather, you must apply
2 your reasoned judgment as to whether this situation
3 calls for life imprisonment without parole or
4 whether it requires the imposition of death, in
5 light of the totality of the circumstances
6 present.

7 The Court instructs you that you, as
8 individual jurors, must consider mitigating
9 circumstances. Therefore, even if all other eleven
10 jurors find that a certain mitigating circumstance
11 does not exist, if you believe it does exist, you
12 must find that mitigating circumstance, and weigh
13 it in your further deliberations.

14 The Court instructs you that the sentence of
15 death may only be considered as described in
16 sentencing instruction number 1. However, at no
17 time is any juror required to vote for the death
18 penalty unless it is that juror's individual
19 determination that the death penalty is warranted
20 in this case."

21 The last thing is the form that conforms to
22 Instruction Number 1. You can fill out your
23 verdict on that particular form.

24 Let the argument proceed.

25 FINAL ARGUMENT BY MR. HORAN:

26 Ladies and gentlemen, I want to go back over S-1
27 because as the Court noted, it is a long instruction. And
28 this will be the first time that you get to see it, and I
29 want to, if I can, explain it to you as best I can about how

1 the process of determining what your verdict will be is to
2 come about. The first part of this instruction is what I
3 call the catapulting factors. What that does is these four
4 factors right here, these four findings of fact, before you
5 can consider the death penalty, you have to find one of
6 these.

7 One of these four you have to find: That Curtis
8 Flowers actually killed Derrick "BoBo" Stewart or Derrick
9 Stewart; that Curtis Flowers attempted to kill Derrick
10 Stewart; that Curtis Giovanni Flowers intended the killing of
11 Derrick Stewart take place; or that Curtis Giovanni Flowers
12 contemplated that lethal force would be employed. I submit
13 to you, ladies and gentlemen, the case has been proven to you
14 beyond a reasonable doubt, three of those four factors. The
15 only one that we did not prove is that he attempted to kill
16 Derrick "BoBo" Stewart, and the reason we didn't prove that,
17 we proved number one, that he did, in fact, kill Derrick
18 "BoBo" Stewart. What does that do?

19 It catapults you into the second determination as
20 to whether or not there are any aggravating circumstances.
21 There are two of those that we have listed for your
22 consideration. "The capital offense was committed for
23 pecuniary gain during the course of an armed robbery." The
24 proof is overwhelming that this Defendant gained as a result
25 of this capital offense and that "Curtis Giovanni Flowers
26 knowingly created a great risk of death to many persons."
27 Now I will get into that later.

28 Then you have to consider in this section what they
29 have submitted as mitigating circumstances: Whether the

1 Defendant, "Mr. Flowers had no significant history of prior
2 criminal activity." Any other matter of his life, his
3 character or record brought to you during this trial which
4 the jury deemed to be a mitigating factor on behalf of him.
5 And the third one, whether or not "Mr. Flowers' involvement
6 in religion and spirituality to the benefit of himself and
7 others."

8 You take those mitigating factors; you take the
9 mitigating factors; you weigh those against any aggravating
10 factors that you have found beyond a reasonable doubt, and if
11 those mitigating factors do not outweigh the aggravating
12 factors, then it is within your province at that point in
13 time to sign the form of the verdict and make these findings
14 and write those findings down on this form; you impose the
15 death penalty. And I submit to you, ladies and gentlemen,
16 that that is the case you have before you.

17 With this Defendant, three of those four factors,
18 we have proven beyond a reasonable doubt and that he should
19 suffer death for killing Derrick "BoBo" Stewart, a young man,
20 16 years of age who was proud. And you think about things
21 sometimes and you hear people say things, and you don't
22 really appreciate the simple things in life. But a young man
23 that was proud to have a job in the air condition, under the
24 air conditioner, just as proud as he could be, a young man
25 that touched so many lives in 16 short years, a young man
26 that anybody would be proud to say, That's my son. I am
27 proud of you, Derrick. That's what his daddy said, and
28 that's what his mother said. I guarantee you they wish today
29 that they could tell him that. And I bet you they didn't

1 tell him as many times as they wanted to.

2 But I want to go over some other things. I want to
3 take you back to that store, and I want to kind of tell you
4 my version and it's my version for what happened, and I think
5 this is borne out by the proof. The Defendant went down to
6 that store for the purpose of seeing Bertha Tardy. Derrick
7 Stewart had been there two days, and Robert Golden had been
8 there, that was his first day. He had no idea those two
9 individuals would be there. But when he got to the store, he
10 confronted Bertha Tardy. Something bad happened. He pulled
11 his gun like he had planned at some point in time, and he
12 shot her. And I submit to you that when he shot Bertha, two
13 other employees-- it's 18,000 square feet in this store.
14 They came, they came near.

15 And about that time Carmen Rigby was coming back
16 from her errands, and we know, we know that Derrick "BoBo"
17 Stewart saw Carmen Rigby laying at his feet dead before he
18 died. How do we know that? Because Melissa Schoene
19 testified that his blood had pooled up against hers. And the
20 last two things he saw on his short and eventful life and
21 impressionable life, the last thing he saw was that man
22 putting that gun close to his head and basically made him
23 brain dead. He shot. Before he saw that, he saw Carmen
24 Rigby laying there already dead. No young man deserves to
25 die. Nobody deserves to die like that. In your sleep maybe;
26 you can understand a bad car wreck. But BoBo Stewart, he
27 didn't deserve that.

28 Here was a guy and he probably, and I can't argue
29 this as being a fact, saw Mr. Golden come to his death, or

1 Mr. Golden or saw him come to his death. Either way, it
2 doesn't matter. Mr. Golden is the guy that called Sam Jones
3 for a job looking to be gainfully employed. But see, that
4 didn't mean anything to Curtis Giovanni Flowers on that day
5 because he didn't care how proud Randy and Kathy were of
6 BoBo. It didn't make any difference to him. He didn't care
7 that Derrick cared more about other people than he did
8 himself. He didn't care about that. He cared about getting
9 some money, and he cared about confronting Bertha Tardy and
10 he did that. And because BoBo Stewart wanted a little extra
11 spending money, he lost his life. He is not going to get to
12 tell his children how proud he is of them, and Randy Stewart
13 is not going to get to tell BoBo and say, "BoBo, you done
14 well. You have been a good boy" ever. He is not going to be
15 able to do that. He is not going to be able to see the
16 fruits of his labor. Randy and Kathy, they are not rich
17 people, but that's what they have is their ability to raise
18 children. That's what we all have, and that man sitting over
19 there took that away from them.

20 And I can't see for the life of me, after you
21 consider this instruction, how you can come to any other
22 conclusion than to tell Mr. Flowers, Mr. Flowers, we follow
23 the law. We were sworn to follow the law. We took an oath.
24 Each one of you took an oath. People from this community
25 were selected to be fair and impartial, and that's what you
26 did.

27 And I want to talk to you about something right
28 now. Nobody from the DA's Office is going to call anybody or
29 do anything to find out anything about your verdict. If you

1 come back and you mark on here, we are unable to agree on
2 this form right here, if you write "We are unable to agree,"
3 and the foreman signs it, that is within your province. If
4 you find that, We sentence him to life imprisonment, you are
5 not going to hear a peep out of this office, not one word.
6 We are not going to invade the province of your home. We are
7 not going to call you. We are not going to come to your
8 office, not going to come to work. It's not going to
9 happen. Regardless of your verdict, you won't be bothered by
10 anybody from the State of Mississippi because that is your
11 verdict. That is within the privacy of your own mind and the
12 province of this jury as a whole.

13 But I tell you; I think the facts are here, and if
14 you look at that instruction, if you look at the four
15 factors, three or four that we have proven, then the
16 aggravating circumstances, and if you look at the aggravating
17 circumstances and then the mitigating circumstances, if those
18 mitigating circumstances do not outweigh the aggravating
19 circumstances, then it's well within your province to write
20 on that form all that you have found and find that this
21 Defendant should suffer death.

22 Curtis Flowers, they came in here, they came in
23 here and put on all this proof about him singing in a choir.
24 That is fine. Do these things that they told you, do they
25 outweigh what he did? Because see, ladies and gentlemen,
26 you have got to be responsible for your acts, and that is
27 what Randy and Kathy were doing when they trained Derrick
28 "BoBo" Stewart to want to have a job. That's what he, what
29 they were doing. We want you to understand, son, that when

1 you get out in that world, it's going to be tough. We are
2 training you, and I'm not standing up here saying BoBo
3 Stewart wasn't like any other 16 year old because he probably
4 was. He wasn't an angel, but he did the best he could do,
5 and they did the best they could do for BoBo. And at 16
6 there is not many of them out there like BoBo. And I don't
7 think any 16 year old should come to a death like that. I
8 don't care how bad he is. And I have seen some bad ones, but
9 I tell you, when you get in a situation like this, when BoBo
10 is laying on that floor with his ball cap in a pool of blood
11 and he is gurgling for his last breath, it just makes you
12 wonder what is going on. How can a family try so hard to
13 make a young man do so right and he gets punished? He
14 received the ultimate punishment is what BoBo did, for no
15 reason.

16 Robert Golden, just like BoBo, trying to better
17 himself--

18 BY MR. LUMUMBA: --Judge.

19 BY MR. HORAN: I'm going through them all,
20 Judge.

21 BY MR. LUMUMBA: Objection.

22 BY MR. HORAN: I am going through all the
23 victims. I'm not just-- just the facts.

24 BY MR. LUMUMBA: Can we approach?

25 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
26 THE JURY AS FOLLOWS:)

27 BY MR. LUMUMBA: I have a double jeopardy
28 objection. And first of all, he is supposed to be
29 arguing BoBo Stewart, and for him to argue other

1 people, including other people who he has already
2 been sentenced for, I think is clearly double
3 jeopardy. So I am objecting to any argument on
4 that issue.

5 BY MR. HORAN: That aggravating factor allows
6 this argument.

7 BY THE COURT: Yeah, once the aggravating
8 factor of the great harm to others is, allows him
9 to argue, but you should limit that argument.

10 BY MR. HORAN: I will, as to who was at the
11 scene, and I think the proof bears that out as far
12 as he was trying to better himself. What is wrong
13 with that?

14 BY THE COURT: That is not what he objected
15 to. I don't think.

16 BY MR. LUMUMBA: No, I do object to him
17 talking about Golden's first day. I don't have a
18 problem about him-- well, I object to all of it,
19 but according to your ruling, I would guess that
20 you would allow him to say that Golden got killed,
21 but he can't go into Golden's life and talk about--

22 BY THE COURT: --no, no, no--

23 BY MR. HORAN: --I'm not going to do all that.

24 BY MR. LUMUMBA: He just started talking about
25 his first day and all that stuff. That is
26 irrelevant.

27 BY THE COURT: Okay.

28 END BENCH CONFERENCE.

29 BY MR. HORAN: May I proceed?

1 **BY THE COURT:** Uh-hum.

2 CONTINUING ARGUMENT BY MR. HORAN:

3 Mr. Golden, much like BoBo, was trying to better
4 himself, and he paid the price. Carmen Rigby, who was just a
5 loyal employee at the store, she paid the price. And Bertha
6 Tardy, who tried to help this man, who loaned him thirty
7 bucks the first day he came to work, and all indications are
8 she didn't even try to make him pay for these batteries
9 because this check is there in evidence if y'all want to see
10 it. All these people died for no reason, no reason
11 whatsoever.

12 And yes, we had problems coming in here today and
13 last week proving exactly what was taken out of the store.
14 It's not easy to do that when you are working a crime scene,
15 and the bookkeeper is laying on the floor dead. It's hard to
16 do. And the owner is laying on the floor dead, and the two
17 other employees in that store are dead. It's kind of hard to
18 do, but we did it. They kept sufficient records so we could
19 do that.

20 BoBo is who you are considering. This case is on
21 BoBo. And I don't think that the Stewarts really want a lot
22 of sympathy from you. I really do not think that. They want
23 some justice. They want you to take that instruction and do
24 your job. They want you to look at the four factors, and
25 they want you to look at the aggravating circumstances, and
26 they may not ever be able to tell BoBo, "Son, we are proud of
27 you" ever again until they see him again, but they can say we
28 are proud of the American justice system. And that's what
29 they are looking for from you people, for you to do your

1 job. If you go back there and deliberate and do your job,
2 they will be proud of the system. And they will always be
3 proud of BoBo and who he was, and they will be proud of the
4 job that they did raising that young man until he was 16
5 years of age. Thank you.

6 BY MR. LUMUMBA: May I proceed?

7 BY THE COURT: Yes, sir.

8 FINAL ARGUMENT BY MR. LUMUMBA:

9 Good afternoon-- well, actually it is still good
10 morning, ladies and gentlemen of the jury. I stayed up most
11 of the night last night, and let me say this in the
12 beginning. I think it does mean a question of whether the
13 system works, and I have been looking at you guys throughout
14 the trial. And you have been looking at me, and it's okay,
15 and I understand. I understand. And I think that we should
16 all understand it's about Mr. Flowers. First of all, it's
17 not about me, but I also understand that certain people
18 probably have made up their mind already even though they are
19 not supposed to have, but it's okay. It's natural. I
20 understand that certain people made up their mind really
21 before we got started, not everybody, but some people did.
22 And I sat around and I understand that people's, certain
23 people's background makes them lean in a certain way even
24 before we get started, and I understand that. Their beliefs,
25 what they believe in, it really does. Sometimes your
26 leadership is bad because that's what they believe in,
27 something already.

28 But I say this, is that I have thought about a lot
29 of things that we could say here today, and, of course, it

1 never entered my mind to say anything negative about Stewart,
2 about the other persons who died, and that has never
3 concatenate, that has never occurred to anybody including Mr.
4 Flowers because Mr. Flowers did not commit these murders at
5 all.

6 I have thought about well, maybe we should talk a
7 little more about the evidence and what they didn't prove
8 because this is important to this phase too because see, you
9 have to find everything really beyond a reasonable doubt
10 again even though you don't get the exact evidence. And I am
11 thinking; I am saying here is a man that could be voted to
12 death penalty for having a gun that no one ever saw him with,
13 no one, not even Doyle Simpson; for shooting a gun that no
14 one ever saw him shoot; for wearing shoes that nobody
15 credible ever saw him wear; and shoes which we can't even say
16 for certain made a print which somebody made; for having a
17 box in his house with ten and a half shoes when the expert
18 told us that the shoes didn't have to be ten and a half that
19 made the print. They could have been anywhere from 10 to 11
20 and that over 660,000 shoes did it.

21 And I thought about well, maybe I should ask or
22 raise the question of the prospect of giving a man the death
23 penalty on the word of Doyle Simpson who lied once before,
24 and I should bring out that, you know, it's, it's kind of
25 like old school as they say in the community I come from.
26 Like old gee, old school, that if you commit a crime or you
27 give a gun up to somebody or sell a gun to somebody whose
28 name you want to lie about like you lied about before, and a
29 crime occurs; then the first thing you do is report that your

1 gun has been stolen.

2 So I thought about raising the perspective of
3 putting a man to death, and we are talking about the system
4 working; putting a man to death who is identified by many
5 people or identified actually by a person who saw him or saw
6 somebody, not him, clearly not him, for a split second glance
7 going in the opposite direction of Tardy's store at 10
8 o'clock, right around the same time that someone else was
9 supposed to be seeing Mr. Flowers running from the store,
10 right about the same time. And I have thought about putting
11 a man to death where a number of people have gotten him
12 looking different in almost every place that he was supposed
13 to have been on a journey that no one can ever say that he
14 ever made with any degree of positivity.

15 And I thought about, you know, all the people who
16 they say have been put to death and then found out later they
17 were innocent, and I say how sure do we need to be in the
18 American system to put somebody to death, and does it
19 change? Does it change depending upon who we are talking
20 about, who they are? We do still have problems. Of course,
21 we do. I mean and that is true in any society. It's not
22 just true here in America. We have problems. I mean you can
23 look at the audience and see we have got problems - black
24 people over here, white people over here.

25 BY MR. EVANS: Your Honor, this is improper
26 argument--

27 BY MR. LUMUMBA: --been that way--

28 BY MR. EVANS: --and I object.

29 BY MR. LUMUMBA: Been that way; I'm talking

1 about the death penalty, Judge.

2 BY MR. EVANS: Your Honor, I am stating an
3 objection if he doesn't mind.

4 BY MR. LUMUMBA: Can we approach the bench
5 with it?

6 BY THE COURT: Uh-huh.

7 BY MR. LUMUMBA: So he can't give a speech.

8 (CONFERENCE AT THE BENCH OUT OF THE HEARING OF
9 THE JURY AS FOLLOWS:)

10 BY MR. EVANS: It is improper to even refer to
11 people in the audience. He knows it is. It is
12 improper to refer to race. This Court has
13 specifically told this jury that they cannot
14 consider race, and he is attempting to put race
15 before this jury, and it is improper and I object.

16 BY THE COURT: It's pursuant to your
17 instructions.

18 BY MR. LUMUMBA: Hold, hold, hold, hold,
19 hold. I can't talk about race, and race is in the
20 instruction? I'm going to talk about why they
21 shouldn't consider race. That's what I'm about to
22 argue about.

23 BY THE COURT: Okay. I have got no problem
24 with that.

25 BY MR. LUMUMBA: Okay.

26 BY THE COURT: But don't, you should not refer
27 to the folks in the audience. You commented-- I
28 don't find that-- well, go ahead.

29	END BENCH CONFERENCE
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1 BY MR. LUMUMBA:

2 Well, and we do have still in many instances a
3 divided society, so what the question becomes, what do we do
4 to bring it together, or what do we do to keep it apart. And
5 one thing we can't do, we can't have different standards.
6 And one thing we can't do, we can't be hypocrites. We can't
7 exclude all the blacks from the jury and then come in here
8 and talk about you are worried about somebody talking about
9 race.

10 BY MR. EVANS: Your Honor, again--

11 BY MR. LUMUMBA: --You can't do that--

12 BY MR. EVANS: --I object. This is
13 misleading. It is untrue and I object--

14 BY MR. LUMUMBA: --It is absolutely true--

15 BY MR. EVANS: --The Court has already been
16 through this--

17 BY MR. LUMUMBA: --that the only one person--

18 BY THE COURT: --Mr. Lumumba, you--

19 BY MR. EVANS: --several times.

20 BY MR. LUMUMBA: --who is on the jury and
21 that's because you said he had to be there.

22 BY THE COURT: Mr. Lumumba, you can't make
23 that argument. That is sustained.

24 BY MR. LUMUMBA: Very good. I will move on.
25 I will move on.

26 BY MR. EVANS: I would ask that the jury be
27 told to disregard that because it is not something
28 that is true.

29 BY THE COURT: It is not--

1 BY MR. LUMUMBA: --It is-- no, no--

2 BY THE COURT: --it's not part of the evidence
3 so you can't--

4 BY MR. LUMUMBA: It's not a part of the
5 evidence, and I will stop it for that reason. But
6 the statement is not true--

7 BY THE COURT: --but I have ruled. Let's move
8 on--

9 BY MR. LUMUMBA: --I think the Judge is not
10 going to make that statement. I know you are not
11 going to make that statement.

12 BY MR. LUMUMBA:

13 Sometimes we do things to achieve a certain result,
14 but let me go-- we should not be hypocrites. We should not
15 say we don't want to talk about something, and the reason I'm
16 talking about it is because it's in the instructions that it
17 shouldn't be considered, either consciously or sub-
18 consciously. What we should be able to do here is to look at
19 this chair right here and see a young white man sitting in
20 it, an Oriental, an Indian or anyone else, somebody that
21 looks as close to us as we possibly can and say that that
22 same person we would sentence to death on the basis of a
23 woman who came in here and lied about the age of her own
24 children in order to justify buying them shoes that she never
25 bought. We should be able to look at this chair and see a
26 different kind of person, any kind of person, somebody we
27 know or somebody we don't know and be able to justify,
28 sentence them to death for a crime that no one ever saw them
29 commit on the basis of something that could have got on

1 their hands in many different ways including from a handshake
2 for the people who brought them to the station. And we
3 don't even know for sure it's on their hand because the
4 officer that took it apparently didn't even know what he was
5 doing.

6 And yes, we look away because some of us have made
7 up our mind; I understand this. But for those who would like
8 to listen, those who have said actually before, for those who
9 have felt in their heart that it is wrong to sentence a human
10 being to death, and that is not in all that the law says, I
11 understand, but those who have said that in their heart, let
12 us see if this is a human being. Let this trial tell the
13 story; is this gentleman here a human being? Does God look
14 at him the way he looks like everybody else?

15 And it's not pleasant for me to address and talk to
16 people about things they don't want to hear, but I wanted to
17 say a lot of kind things. I can't say kind things because
18 it's just not in me. I'm the kind of person that says what
19 is on his mind. Maybe Curtis got the wrong lawyer. Maybe he
20 should have got somebody to come up here and shuffle and
21 pretend and act like things don't exist that do exist, and
22 then go out in the hall with the other lawyers and hang
23 around in the hall talking about Wow, don't you know how it
24 is if you get a black person charged with killing white
25 people and white people on the jury? Lawyers talk about it
26 all the time. Maybe that is who I should have been, but I'm
27 not like that.

28 And so I'm not fretting the fact that we have the
29 kind of jury that we have because, you know, for whatever

1 reasons, it's here. But I'm asking you to dig deep into your
2 consciousness. I'm asking you to think clearly about it. I
3 am asking you to answer the question: How sure can you be on
4 the basis of this record? Because like one client of mine
5 once said, who is now deceased; his name was Toopot; he said,
6 "I don't like people killing people." He said, "Me against
7 the world." That is how Curtis Flowers feels right now. Me
8 against the world.

9 Who is down with me trying to be a human being,
10 trying to demand the same level and standard of proof as any
11 other human being? Who is down with me when they bring in a
12 box with no shoes in it? The man went to the chair. He was
13 sentenced to death. He was executed on the basis of a box
14 that had no shoes in it. These guys are like wizards,
15 magicians. Wooo, they will go into infamy or whatever.
16 Greatest prosecution trick ever - a death sentence based upon
17 shoes that they didn't have and that Ms. Moore says her child
18 has, no longer lives with her, and she bought over 6 to 7 or
19 8 months before, and his feet grows fast.

20 A man executed for a crime that no one ever saw him
21 commit and they didn't have any physical evidence positively
22 proving that he did commit. And even if you believe a bunch
23 of people walking a path and giving a million different
24 descriptions, the only thing they can say is he was going in
25 that direction and that at some point he left that
26 direction. Can't say he shot nobody because even if you are
27 in the atmosphere, if you go some place where they have shot
28 a gun, you can pick up residue. Convicted of having and
29 sentenced to death for having a gun that nobody can even

1 prove that he knew was there because Doyle Simpson said-- and
2 we ask people and, you know, I am straight with you. I am
3 straight with you. It bothers me a little bit.

4 Somebody gets up here and misquotes the evidence
5 and says that he knew it was in the car and misquoted the
6 evidence on several other occasions like saying that Sam
7 Jones said it was 9 o'clock, that it was 9:30 when he called
8 and then he came. The evidence clearly said that he said
9 that he called around, he called before 9:30. He arrived at
10 9:30 because we went into it several times. And all I say is
11 that if you are not certain, then just ask the Judge if you
12 can read it back. And before we can get to lunch, finish
13 with lunch, boom. There is a verdict. Ain't nobody read
14 nothing.

15 Yeah, dislike me. It's okay. Look away from me.
16 Stare at me. It's okay. The question becomes-- laugh at
17 me. It's okay. You know, when I think about death
18 sentences, and we all come from different places, and this is
19 a different society, and we have got different perspectives
20 on it. And that is permissible. We are in a society where
21 people sometimes get the death penalty and sometimes don't.
22 A rich football player charged with killing people doesn't
23 get the death penalty. You have got a lot of money. A woman
24 kills her two kids in South Carolina, says somebody else did
25 it. We later on find out she did it herself. She doesn't
26 get the death penalty. You couldn't really say it's equally
27 applied.

28 Sometimes kids shoot up other kids in school, not
29 even charged with the death penalty because the law doesn't

1 even allow them to be charged with the death penalty. But in
2 some cases the law allows it. So in trying to provide
3 justice, we just need to be careful. We need to make sure
4 that we make decisions which are not absolutely inconsistent.
5 And what the law asks you is to be very careful, to be
6 careful about looking at the evidence; be very careful about
7 how you apply the evidence, and be very careful about how the
8 decision is applied. And use your own background because we
9 have different backgrounds. Some of us come from one place,
10 and some of us come from somewhere else, and that is okay
11 because that's the kind society is, and nothing wrong with
12 that.

13 When I think about death penalty, I think about
14 people hanging from trees. I think about long history of
15 things being said about people being strung up all up and
16 down the Mississippi Delta. That is just because from where
17 I come from, or what my family taught me, that's what I think
18 about. I think about lynchings. I think about big crowds of
19 people showing up and being advertised in the paper and
20 people showing up and celebrating both before and after. So
21 you can understand why I argue with force. You may not have
22 those experiences, and thank God that you don't. But that is
23 why God put us both in this same world so we can interrelate
24 with our experiences, and we can stand on our experiences.

25 And it doesn't have to be me against the world.
26 Because although it may seem that way, it really isn't that
27 way because a lot of people, a lot of people, a whole lot of
28 people have got the same experiences that Mr. Flowers has and
29 that I have. So even though a decision is only made in this

1 courtroom, what it means is that we must make decisions which
2 can help us in society as a whole. Don't talk about
3 problems. Don't talk about what we may feel about sometimes
4 standards not being applied equally.

5 But when people get on the stand, when black
6 witnesses take the stand and they say, well, the prosecution
7 witness lied. Do you see those people? You know how they
8 are. And when Curtis Flowers makes a statement that he, like
9 any number of people who sit around and drink a beer at a
10 time, drinks a beer, he didn't want no job. He didn't want
11 no job. He didn't want to work. Two weeks out of his life
12 he didn't have any job. He didn't want to work. Based upon
13 my experiences, that is trying to say something about Curtis
14 and about all of us. Excuse me if I am wrong.

15 Curtis stood up here before you and said all he
16 could say. If he was guilty of this crime, he would say
17 that, and we would ask for something else at this point in
18 the sentencing hearing. We would say something else. We
19 would want to stress more the fact that he was involved
20 religiously and stress more the fact that he lived with
21 people, and these people respect him. But Curtis is the same
22 person who they gave 50 different, and 50 is an exaggeration,
23 who they gave many different description of his clothing. He
24 is the same person who Patricia Hollman has coming in and out
25 of his house at the same time that someone else has him in
26 the parking lot at Angelica. Someone else has him walking
27 past going toward Angelica. He is the same person that is in
28 several places at the same time with several different coats
29 of clothes. And he is the one that says he is not guilty.

1 So even though you disagree and obviously you made
2 a different decision, and we do that; that is okay.
3 Hopefully, if that is not the right decision, at some point
4 it will be remedied. But one decision is pretty final. It
5 can't be righted. You can't correct that. And that's the
6 sentence of death.

7 And of course, we grieve for all the people, all
8 the people who have stood up there. I understand what the
9 coach talks about. I understand what the parents talk
10 about. I have a son that was shot in the head. We grieve
11 for all of them. But does-- I mean listen, listen. Does the
12 fact that we grieve and the fact that they suffer make it
13 okay to vote for death on this record? That is the
14 question. No one has ever said they didn't grieve. That is
15 not even disputed. I coach teams. I know what the coach
16 feels. The coach probably don't like me right now because of
17 the position I'm taking, but we have got a lot in common.

18 So for those who have not made up their mind and
19 for those who have made up their mind but can reconsider
20 because they shouldn't have made up their mind by now, all we
21 ask them to do is to think about it. Ask themselves can they
22 really believe to the death any of those witnesses that the
23 prosecution put on the stand? I'm not talking about the
24 ones in the sentencing phase. I believe all them. But can
25 they really believe Patricia Hollman to the death, who lied
26 about her children's age. To the death, can they believe
27 Clemmie Fleming? To the death, can they believe Mr.
28 Collins, that he is accurate about what he is talking about
29 -- to the death, when he was corrected in his own testimony

1 several times between one hearing and the next?

2 And if this is imposing upon you, excuse me. Hold
3 it against me. But don't hold it against Curtis because see,
4 I'm not about to get executed. Nobody is about to decide on
5 my life. In fact, nobody can do anything to me, nothing.
6 But it's not about me. It's not about them. It's not about
7 the way that they use this sly way to make these inferences
8 that these people are out there putting impressions on them.
9 What it is about is life and death.

10 In the instruction which the Judge has given and
11 which you will take to the jury room, please keep these
12 things in mind. When you go through here and you say whether
13 you find beyond a reasonable doubt whether Curtis Flowers has
14 killed, and they claim they have killed-- and you know, I see
15 Counsel up here going through these geriatrics or histrionics
16 and this thing about, this is how I think it happened. He is
17 about to put somebody to death on a version of the facts that
18 nobody saw, that he doesn't have the faintest idea that ever
19 occurred. He put the gun to his head. First of all, the
20 expert testified that it was not close range or contact
21 fire. So he doesn't know how far or how close anybody was.
22 But then he has got certain people coming and going out, and
23 he is going to draw the line and make it graphic. Look, it
24 is gory. I understand it's gory, and it's terrible. But how
25 is he going to sit up here and argue a set of facts which
26 comes totally from his imagination? Speculation, he almost
27 admitted it and asked you to put somebody to death based on
28 it. You don't even know how many people were in the store
29 involved with this incident. You don't know whether

1 everybody who may have been in the store was actually
2 involved with the incident. A lot of times people are with
3 people who do things, and they leave the scene and don't say
4 anything either. You don't know any of this.

5 If a gun was shot, and it certainly was, you don't
6 know who shot it. Individual responsibility to make these
7 determinations, individual. Beyond a reasonable doubt, and
8 when you look to this, you should think of all the evidence
9 in this case. If you get beyond that for the sentencing
10 hearing, and keep in mind that this is the sentencing
11 hearing. And the only reason that you are asked to make that
12 determination again because what is reasonable to you may
13 certainly become more serious in a sentencing hearing than it
14 is in a, just trial for guilt and innocence.

15 Remember as they have said, nobody can define
16 reasonable doubt for you, but when they are saying reasonable
17 doubt in a sentencing hearing, I would submit that they want
18 you to be pretty, they want you to be certain, as certain as
19 a human being could possibly be about anything. There is
20 nothing more final than death.

21 Secondly, these things about aggravation are
22 basically things about what they claim happened. This thing
23 about the pecuniary gain, about money from the store, you
24 know, fine. If you think somebody took money from the store,
25 fine. I mean, you know, we don't have a position on that.
26 Certainly we weren't there and we can't say.

27 Secondly, Curtis Giovanni Flowers-- and by the way,
28 \$400.00, as I understand it, was taken from the store. I had
29 a little bit of problem following the bookkeeping thing, but

1 if I understand, there was a hundred dollars in there that
2 shouldn't have been or something like that, and then there
3 was three hundred that they keep in there for petty cash
4 according to the records. So four hundred dollars was gone
5 from the store, at least three hundred, I think. \$255.00 is
6 in Connie's bedroom. I don't even know why they bring that.
7 If I have \$255.00 in my house and somebody has lost \$300.00,
8 does that mean that I stole it? Even if you have some other
9 reason of thinking I may have been involved, does that mean I
10 stole it because I have got \$255.00 in my house, and you
11 can't even say it's mine, that I brought it there.

12 Secondly, this thing about Curtis Flowers knowingly
13 created a risk of death to many persons. Curtis Flowers is
14 the same man who was in several different places at the same
15 time wearing several different types of clothing, according
16 to their witnesses. Even if you get beyond that aggravating
17 circumstances, the next step is to talk about whether the
18 mitigating outweigh the aggravating, and we have shown you
19 through witnesses that Curtis Flowers is a respected person
20 in this community, respected by his family. And you knew
21 already that one of the things he did is he is involved
22 religiously.

23 But now see here is the important point. Even if
24 you find that the mitigating factors do not outweigh the
25 aggravating factors and you find beyond a reasonable doubt
26 that the aggravating factors exist, and any one of you who
27 decides that that is not the case, then that is it. You
28 can't go no further. But if you find that that does exist,
29 that the mitigating does not outweigh the aggravating, then

1 you consider whether you want to impose the death penalty.
2 Just because-- and I don't want this to be-- I think the
3 instructions when read together, and that's what the Court
4 says; they read them together. It may be just a little bit
5 misleading if you are not careful, but what it says here,
6 that you can, you may impose the death penalty if you find
7 that, and then at the end it says that if you are going to
8 impose the death penalty, you can go on and say, because they
9 have got a semicolon here separating this, I think -- okay,
10 no, where it says a comma, and say you can find that they do
11 outweigh. And then you can go on and say, and we decide we
12 want to impose the death penalty if everybody agrees.

13 But because you find that the mitigating do not
14 outweigh the aggravating or the aggravating outweigh the
15 mitigating, that does not mean that you have to impose a
16 death penalty. Counsel put it in a different way. It's in
17 your province to impose the death penalty. Well, that is
18 true, but let's break it right down to common language. You
19 may do so. You are not required to do so. It's only then
20 that you could even think about doing it, but then it's up to
21 you whether this case and these facts would be the kind that
22 you would be comfortable with sentencing any human being to
23 death, any human being.

24 And so then that's why it has these other lines
25 where you can say, We, the jury, unable to agree unanimously
26 on a punishment, or you can say, We, the jury, feel that
27 Curtis Flowers should be sentenced to life imprisonment
28 without parole. And the instruction which makes that very,
29 very clear is the instruction which is Instruction Number 6.

1 It says, "The Court instructs you that the sentence of death
2 may only be considered as described in sentencing instruction
3 number 1," which refers you back to number 1 in that whole
4 formula. And then it says, "However, at no time is any
5 juror" - speaking to each one of you individually - "required
6 to vote for the death penalty unless it is that juror's
7 individual determination that the death penalty is warranted
8 in this case." In other words, that juror has to decide that
9 the death penalty should be given. If that juror doesn't
10 decide that, then that last line, or then if all the jurors
11 don't decide that, then that line which says that the life
12 without parole should be given should be signed. If any one
13 juror or more decide that it should be life and not death and
14 decide not to give the death penalty, then what should be
15 signed is the line where it says, We cannot agree.

16 We even have the District Attorney or prosecutor
17 telling us how Derrick was shot, and how he knows how Derrick
18 was shot when he wasn't there, I don't know. Just don't be
19 manipulated; don't be manipulated. There is no chance that
20 we can manipulate you. You know you. And if we were trying
21 to manipulate you, if we were manipulating you, I wouldn't be
22 talking to you the way that I talked to you when I started,
23 no more than any of those witnesses who testified that those
24 people were lying were manipulated. Someone has to have a
25 lot of gall to think that you don't have, that a person
26 doesn't have the substance or the person to stand on their
27 own two feet. But don't let anybody manipulating you,
28 feigning, making you feel, faking and making you feel that
29 somebody else is trying to do it from the other direction.

1 We go through this all the time in basketball and various
2 other sports when you fake one way and then you go the other
3 way because you're trying to fool somebody.

4 Excuse me, please.

5 (Pause while Defense Counsel confer briefly.)

6 BY MR. LUMUMBA: And just as reminded by
7 Counsel, it's their burden to prove everything that is in
8 there, and all we say is don't let them off the hook because
9 different ones of us feel different things. We feel very
10 strongly that every witness we have put on that stand was
11 telling the truth. We submit that they are telling you
12 exactly what happened because, and not only the ones in
13 sentencing, but the ones in the trial in chief because they
14 have nothing to gain. Nobody is going to give them any
15 reward. Nobody is going to do anything for them. Some of
16 them barely know Curtis Flowers. But they are saying it
17 because it's the truth. But regardless of what you know,
18 don't believe something which there is no proof to support.

19 May we approach, please?

20 BY MR. LUMUMBA: How much time do I have?

21 BY THE COURT: You have got about, let's see,
22 between 15 and 20 minutes.

23 BY MR. FREELON: That will be enough.

24 BY MR. LUMUMBA: Okay.

25 BY THE COURT: To give you an exact, until
26 about 12:53.

27 END BENCH CONFERENCE.

28 (Defense Counsel confer briefly.)

29 BY MR. LUMUMBA:

1 Finally, once again, I encourage you to not to be
2 deceived by anybody. People can get up here and talk about
3 letting somebody go. At this phase in the case Mr. Flowers,
4 the only thing that can happen to him is he either has to be
5 sentenced without parole or the alternative. Nobody is going
6 anywhere. And we can make a number of different arguments
7 about whether people should be put to death. I remember the
8 jurors, some of them talked about an eye for an eye and a
9 tooth for a tooth. I remember some of them saying that they
10 could not give the death penalty, and that was their
11 conscious decision because only God had that right. I
12 remember some of them saying they were in between somewhere.
13 They didn't remember-- not that they didn't remember, but
14 they don't know where they land on the issue. They had
15 various different strong opinions. All jurors have strong
16 opinions and all people have strong opinions.

17 But I think it is important to understand that
18 hopefully all opinions can be affected by fact, and the fact
19 is if there was ever a case where the death penalty shouldn't
20 be given, in order just to protect against mistake and the
21 lack of integrity in a case where a number of people have
22 gotten on the stand and saying other people were lying, and
23 nobody is clairvoyant. That means nobody reads minds. And
24 if somebody tells you that somebody else is lying, there is
25 no way that you can know with certainty to the death that
26 they are not telling you the truth, no matter how much you
27 like them or dislike them or dislike what occurred.

28 We would be less than candid to say that we think
29 that Mr. Flowers should have been convicted. But we are

1 beyond that now. He is beyond that now. There is nothing he
2 can do about that. He will do whatever this Court and this
3 jury does to him, whatever you individually do to him. But
4 we are never going to stop working on this case, and one
5 day-- it may even be after he, hopefully it is while he is
6 still alive, the truth will be known. Regardless of where he
7 is, the truth will be known.

8 So all we say is let us accept that individual
9 responsibility and make sure that Mr. Flowers is not put to
10 death for a crime which he did not commit or for in your
11 perspective, if that is your perspective, if that is your
12 actual individual honest own opinion - and remember you are
13 entitled to that - for a crime which there is not truth in
14 this part of the sentencing hearing beyond a reasonable doubt
15 that he committed. Thank you.

16 BY MR. EVANS: May I proceed, Your Honor?

17 BY THE COURT: Yes.

18 FINAL ARGUMENT BY MR. EVANS:

19 Ladies and gentlemen, the first thing I want to
20 point out to you, that you have had race and different things
21 like that mentioned to you on closing argument. I want to
22 tell you first that that never has any bearing in a criminal
23 justice system. It has none; it should have none. I have
24 seen just as many cases where white defendants were tried and
25 got the death penalty as I have black. That is not before
26 this court--

27 BY MR. LUMUMBA: --And that is totally
28 contrary to fact. Now I mean--

29 BY MR. EVANS: --No, sir. It is not. In my

1 district I have seen just as many--

2 BY THE COURT: --He is saying what he had
3 seen. He can argue that.

4 BY MR. LUMUMBA: Well, he has got very limited
5 experience according to the Supreme Court--

6 BY THE COURT: --Okay, well, that may be. But
7 he is entitled to say that--

8 BY MR. LUMUMBA: --in McCluskey which says
9 about fifteen--

10 BY MR. EVANS: --May I proceed, Your Honor?

11 BY MR. LUMUMBA: Judge, I don't (word
12 unintelligible) on that either, but what I'm
13 saying, don't lie to the jury. Goodness gracious.
14 Don't lie to the jury.

15 BY THE COURT: Well, I don't know that-- Okay.

16 BY MR. EVANS: May I proceed?

17 BY THE COURT: You may proceed.

18 BY MR. LUMUMBA: Goodness gracious.

19 BY MR. EVANS:

20 Out of the district that I come from, I have seen
21 just as many cases. The juries have returned the death
22 penalty against whites. Juries have returned the death
23 penalty against blacks. That is not before y'all. One thing
24 is before y'all, whether this Defendant sitting right here
25 deserves the death penalty. And that has only one
26 justification. Y'all look at the evidence. You look at the
27 type crime he committed. You already know that he committed
28 the crime. You have already found him guilty. The only
29 issue now, is this the type crime that justifies the death

1 penalty?

2 BY MR. LUMUMBA: I object to that because that
3 is not the only consideration. The consideration
4 is whether they find him guilty under the, killed
5 beyond a reasonable doubt and that thing in this
6 hearing. Now that is a misstatement of the law.

7 BY THE COURT: Okay, well, I have instructed
8 them on the law, and they are going to have that
9 before them. Make sure when you talk to them about
10 the law, Mr. Evans, that you follow the
11 instructions--

12 BY MR. EVANS: --Yes, sir. I'm going to go
13 through the instruction.

14 BY MR. EVANS:

15 At this phase the penalty is the only thing that
16 you have to consider. The Court, as I told y'all in voir
17 dire when you were sitting out here, the Court has the long
18 instruction. I think it is four pages. You must go through
19 that instruction. You will find when you go through that
20 instruction that the law in this type of case authorizes the
21 death penalty as a possible punishment. Each of you that is
22 sitting here on the jury assured us in voir dire that if the
23 law for authorized it and the facts justified it, you could
24 consider the death penalty as one of the possible penalties.
25 In this particular case we are arguing to you that the reason
26 the death penalty is appropriate is because of the type crime
27 that has been committed.

28 Now is the instructions? As the Court has told
29 you, there is a form in here that you will need to fill out.

1 On that form you have to go back to Instruction Number 1, and
2 it clearly tells you what you do. It starts out, "We, the
3 jury, unanimously find from the evidence beyond a reasonable
4 doubt, that the following facts existed at the time of the
5 commission of the capital murder," and it tells you right
6 here in brackets where you go to get what you are looking
7 at. It's in paragraph "A" right here on the front page of
8 the first instruction.

9 And as we told you on voir dire several days ago,
10 that is the first step that you have to do. You take it step
11 by step. You go through it. In that first step there are
12 four factors as Mr. Horan told you, "That Curtis Giovanni
13 Flowers actually killed Derrick Stewart, That Curtis Giovanni
14 Flowers attempted to kill Derrick Stewart, that Curtis
15 Giovanni Flowers intended the killing of Derrick Stewart take
16 place or That Curtis Giovanni Flowers contemplated that
17 lethal force would be employed." If you find just one of
18 those, then you write it down right here and you go on.

19 We believe that you will find at least three of
20 them because we find that all of them are present except for
21 the one that he attempted, and the only reason that is not
22 appropriate is that he did, in fact, kill him. So there
23 wasn't an attempt; he did kill him. The reason these four
24 are there instead of just the three is because this is what
25 the law says y'all are to consider. So we find that y'all
26 should at least put those three in here. The foreman,
27 whoever you elect as your foreman, will write those three in
28 under paragraph one.

29 Then you go on to the next step. It says, "Next

1 we, the jury, unanimously find that the aggravating
2 circumstances of:" and it tells you here to go to Section
3 "B." That's the second page of Instruction 1. It has got
4 "B" at the top of it. There are two aggravating factors you
5 are to consider. The first one is that the capital offense
6 was committed for pecuniary gain during the course of an
7 armed robbery. We submit that that has clearly been proven
8 to you. Two, that Curtis Giovanni Flowers knowingly created
9 a great risk of death to many people. We submit that that
10 has been proven because he did, in fact, kill four people.
11 So those two, if you find them, and they will be filled in
12 under this second section.

13 Then you go to the next part which is stating that
14 you find that those aggravating circumstances are present
15 beyond a reasonable doubt and that there are sufficient
16 mitigating circumstances to outweigh them. Then it is our
17 position that this jury, because of the crime that was
18 committed, because of how he killed these people, should be
19 sentenced to death, and that would be the first line right
20 here that the foreman would sign. And we submit that after
21 that is signed, you should return this verdict back in the
22 courtroom to the Judge.

23 There are two other verdicts on here. One is that
24 the Defendant should get life without parole. The other is
25 that y'all cannot agree.

26 This is not a case where there is any justification
27 for the murders. We are talking about a case, and I'm not
28 going to go back through it all because you have heard it,
29 but I am going to sum up a few points that I think are

1 important. They are important to me. We are talking about a
2 16 year old boy, BoBo Stewart. Like many boys his age, he
3 was going to school. He was trying to work through the
4 summer and make some money. He was trying to buy a class
5 ring. He was also trying to help his family by working and
6 making some money. He goes to work his second day at work.
7 He is there minding his own business, doing his job, happily
8 going about his everyday activities, and this Defendant out
9 of greed, out of wanting something that wasn't his, goes in
10 and snuffs out his life for no reason. You saw the
11 pictures. You saw where he was laying in that pool of
12 blood. You have heard the testimony of Dr. Hayne, how he
13 shot him in the head, how that bullet went through his
14 brain. You have heard how he lived for a few days. You have
15 heard how this has affected his family. You have heard how
16 it has affected the community.

17 This is a case that I'm not asking you to give the
18 death penalty for some unknown reason. I'm asking you to
19 return the death penalty because it is the appropriate
20 penalty in this case. I'm asking you to return the death
21 penalty because this Defendant deserves the death penalty for
22 what he has done. What kind of person could go into a
23 furniture store, rob it and commit the kind of brutal act
24 that has been described to y'all, that y'all have seen?
25 Y'all have seen pictures. Those pictures do not do justice
26 to what that crime scene looked like. You can only imagine
27 in your mind what went through the mind of Sam Jones when he
28 walked in that store and saw the brutal acts that this
29 Defendant had committed. This is exactly the kind of crime

1 that our Legislature thought of when they made it a crime to
2 kill people during the commission of a robbery.

3 And we are not talking about two people that know
4 each other and get mad and somebody gets killed. We are
5 talking about somebody that will take another life for no
6 reason, none at all. BoBo Stewart hadn't done anything to
7 this Defendant. The only reason he killed him is so there
8 wouldn't be any witnesses. He took his life at a time that
9 he had his whole life before him, at a time that he hadn't
10 done anything to hurt anybody.

11 I ask that you go back in the jury room. You go
12 down step by step through this instruction. You fill out the
13 form with the factors that the Court has asked you to look
14 at. And you return this verdict of, "We, the jury, find the
15 Defendant should suffer death" because it is an appropriate
16 penalty.

17 Thank you, Your Honor.

18 **BY THE COURT:** Ladies and gentlemen, it is now
19 time for y'all to retire and consider your
20 verdict. These instructions will be delivered to
21 you as well as the exhibits. Let me make sure all
22 those instructions are there.

23 JURY RETIRES TO CONSIDER SENTENCING VERDICT AT
24 12:51 P.M.

25 **BY THE COURT:** The Court will be in recess.

26 (COURT WAS CALLED BACK TO ORDER AT 2:10 P.M.

27 WITH THE COURT, ALL COUNSEL, AND THE DEFENDANT

28 PRESENT AND WITH THE COURT HAVING BEEN HANDED A

29 NOTE FROM THE JURY:)

1 **BY THE COURT:** While they are scanning
2 everybody, they gave me this note.

3 (Note from the jury was handed to Mr.
4 Lumumba.)

5 BY MR. LUMUMBA: Thank you. (Pause) Okay.

6 BY MR. EVANS: May I see it?

7 BY MR. LUMUMBA: Oh, I'm sorry. You didn't
8 see it yet? I thought you had.

9 BY MR. EVANS: No, sir.

10 (Note handed to Mr. Evans. Pause.)

11 **BY THE COURT:** I intend to give them a written
12 instruction that says you should refer to the
13 instructions previously given by the Court. Any
14 objection to that?

15 BY MR. LUMUMBA: Well, what I would tell them
16 is life without parole is life without parole.

17 **BY THE COURT:** I can't tell them. I can't, I
18 have got no--

19 BY MR. LUMUMBA: --no authority?

20 **BY THE COURT:** I have got no authority to tell
21 them.

22 BY MR. LUMUMBA: Okay, well, then--

23 BY MR. FREELON: Bring them back out here to
24 explain?

25 **BY THE COURT:** No, I can't do that. The only
26 way I can communicate with them is through a note.

27 BY MR. LUMUMBA: Okay, what I would do is
28 refer to instruction number-- what is the
29 instruction that deals with that?

1 BY MR. EVANS: I don't think we can refer to
2 any certain instruction.

3 BY MR. LUMUMBA: No, I'm talking about for the
4 second question. The second question says what to
5 do if they disagree; right?

6 BY THE COURT: Yeah. I don't think I can pick
7 out an instruction because I think, I mean I don't
8 think I could for them or for y'all, but I can
9 refer them back to all of the instructions.

10 BY MR. LUMUMBA: Okay.

11 BY THE COURT: There is only six of them.

12 BY MR. LUMUMBA: Okay, well--

13 BY THE COURT: And only one that deals with
14 that.

15 BY MR. LUMUMBA: Okay, well, I would refer
16 them to the instruction that deals with that. That
17 was what I-- but that is up to you. I mean that's
18 what our motion is.

19 BY MR. FREELON: Was that not something that
20 was explained when we opened, I mean when we voir
21 dired the jury about what life without parole
22 means?

23 BY THE COURT: Well, the instruction explains
24 it. I mean--

25 BY MR. FREELON: --that's true.

26 BY THE COURT: --if I could tell them
27 anything, I can't tell them anything but life
28 without parole, and I can't do that.

29 BY MR. LUMUMBA: I was referring to the

1 instruction--

2 **BY THE COURT:** --the bottom part where if they
3 disagree. And there is a form for them-- all they
4 have got, if they disagree, all they have got to do
5 is say they disagree.

6 **BY MR. EVANS:** I think all the Court can do is
7 tell them that they have already been instructed
8 and they should follow the instructions of the
9 Court.

10 **BY MR. LUMUMBA:** Judge, I think you can say
11 it's Instruction Number 1 that they should refer
12 to. That's what the question is. I think you can
13 say that.

14 **BY MR. EVANS:** I don't see how. I think--

15 **BY THE COURT:** --Well, let me ask you; in
16 regard to what it is and that instruction covers
17 all the options, do you have any objection to me
18 referring to it? If neither side objects, I don't
19 think it would -- it just refers them back to the
20 one--

21 **BY MR. EVANS:** --I don't have any objection to
22 it.

23 **BY THE COURT:** Okay.

24 **BY MR. LUMUMBA:** --Well--

25 **BY THE COURT:** --I can say, "You should refer
26 to Instruction"--, no, wait a minute. "You should
27 refer to Instruction Number, Sentence Instruction
28 Number 1."

29 **BY MR. LUMUMBA:** That's what I was saying.

1 BY MR. EVANS: As long as the Defense waives
2 any objection, we have no--

3 BY THE COURT: --Well, they are asking for it.

4 BY MR. EVANS: Yes, sir. I understand that,
5 but I have run into this with the Supreme Court
6 before. Just because they ask for it doesn't mean
7 they are waiving any objections.

8 BY THE COURT: Well, I'm not going to grant it
9 unless they do waive objection to it.

10 BY MR. LUMUMBA: Judge, let me see Instruction
11 Number 1, or do they have it?

12 BY THE COURT: They have got it.

13 BY MR. LUMUMBA: They have got it.

14 BY THE COURT: There is no mystery in there.
15 I mean it gives them the three options.

16 BY MR. LUMUMBA: Okay, yeah, Instruction
17 number 1.

18 (Off the record briefly while the Court is
19 writing a note to the jury. State's Counsel spoke
20 out of the hearing of the Court Reporter.)

21 BY MR. LUMUMBA: I did.

22 BY THE COURT: Huh?

23 BY MR. LUMUMBA: Didn't I say I waived?

24 BY THE COURT: I took it that you did.

25 BY MR. LUMUMBA: Yeah, I did.

26 BY THE COURT: The Court rules that you did.

27 BY MR. LUMUMBA: Okay. All right.

28 BY THE COURT: All right. Here is what this
29 says. "You should refer to Sentencing Instruction

1 number 1." Is there any objection by either side?

2 BY MR. EVANS: No, sir.

3 BY MR. LUMUMBA: No objection.

4 **BY THE COURT:** (To the Bailiff) You may
5 deliver that to the jury. Linda, you may file this
6 in the cause.

7 (Note from the jury was filed in the court
8 file. Court was in recess.)

9 (COURT WAS CALLED BACK TO ORDER AT 3:58 P.M.
10 AFTER THE JURY HAD KNOCKED AND REPORTED TO THE
11 BAILIFF THAT THEY HAD A VERDICT. WITH THE COURT,
12 ALL COUNSEL, AND THE DEFENDANT PRESENT IN OPEN
13 COURT, THERE WAS THE FOLLOWING:)

14 **BY THE COURT:** Y'all ready? Bring the jury
15 in. As before, the same instructions I had before;
16 I don't want any disturbances in the courtroom
17 regardless of what the verdict is.

18 JURY ENTERS THE COURTROOM AT 4:00 P.M.

19 **BY THE COURT:** Ladies and gentlemen, have you
20 reached a verdict?

21 BY FOREPERSON, MS. LADNER: We have, Your
22 Honor.

23 **BY THE COURT:** Would you hand the verdict to
24 the bailiff.

25 (Verdict handed to the Court and then to the
26 Clerk.)

27 **BY THE COURT:** Is this the verdict of all
28 twelve of you?

29 BY SEVERAL JURORS: Yes, it is.

1 **BY THE COURT:** All right, the Defendant will
2 rise. Read the verdict. And read it from the--
3 let me show you where to read it. You should read
4 it from here all the way through there.

5 **BY THE CLERK:** "We, the jury, unanimously find
6 from the evidence beyond a reasonable doubt, that
7 the following facts existed at the time of the
8 commission of the capital murder charged: List or
9 itemize all facts found, if any, from the list
10 under Section A of this instruction which you
11 unanimously agree exist in this case beyond a
12 reasonable doubt. That Curtis Giovanni Flowers
13 actually killed Derrick Stewart. That Curtis
14 Giovanni Flowers intended the killing of Derrick
15 Stewart take place. That Curtis Giovanni Flowers
16 contemplated that lethal force would be employed.

17 Next we, the jury, unanimously find that the
18 aggravating circumstance of: List or itemize all
19 of the aggravating circumstances presented in
20 Section B of this instruction which you unanimously
21 agree exist in this case beyond a reasonable
22 doubt. The capital offense was committed for
23 pecuniary gain during the course of an armed
24 robbery. Curtis Giovanni Flowers knowingly created
25 a great risk of death to many persons. Exist
26 beyond a reasonable doubt and is" significant [sic]
27 "to impose the death penalty and that there are"
28 insignificant [sic] migrating [sic], immigrating
29 [sic] "circumstances to outweigh the aggravating

1 circumstances, and we further find unanimously that
2 the defendant should suffer death."

3 **BY THE COURT:** All right, and it's signed by
4 the foreman of the jury?

5 **BY THE CLERK:** Signed by the, signed by the
6 foreman of the jury, Betty Ladner.

7 **BY THE COURT:** All right, let me have the
8 verdict back, please. Do you want the jury
9 polled?

10 **BY MR. LUMUMBA:** Yes, sir.

11 **BY THE COURT:** All right. Sir, is this your
12 verdict?

13 **BY A JUROR:** Yes, sir.

14 **BY THE COURT:** Is it yours, ma'am?

15 **BY A JUROR:** Yes.

16 **BY THE COURT:** Is it yours, sir?

17 **BY A JUROR:** Yes, sir.

18 **BY THE COURT:** Is it yours, ma'am?

19 **BY A JUROR:** Yes, sir.

20 **BY THE COURT:** Is it yours, ma'am?

21 **BY A JUROR:** Yes, sir.

22 **BY THE COURT:** Is it yours, ma'am?

23 **BY A JUROR:** Yes, sir.

24 **BY THE COURT:** Yours, sir?

25 **BY A JUROR:** Yes, sir.

26 **BY THE COURT:** Yours, ma'am?

27 **BY A JUROR:** Yes, sir.

28 **BY THE COURT:** Yours, ma'am?

29 **BY A JUROR:** Yes, sir.

1 **BY THE COURT:** Yours, ma'am?

2 BY A JUROR: Yes, sir.

3 **BY THE COURT:** Yours, sir?

4 BY A JUROR: Yes, sir.

5 **BY THE COURT:** Yours, ma'am?

6 BY A JUROR: Yes, sir.

7 **BY THE COURT:** I find that the verdict is
8 unanimous. Pursuant to that verdict, Mr. Flowers,
9 I sentence you to-- the jury has sentenced you to
10 death by lethal injection. I set the execution
11 date at May the 15th, 1999. As you know, there is
12 an automatic appeal of this case, so that date
13 will, as soon as the appeal is filed, will go by
14 the wayside.

15 All right. Ladies and gentlemen, I'm going to
16 let you return to the jury room for just a minute,
17 and I will be with you shortly. Court is
18 adjourned.

19 PROCEEDINGS ON MARCH 31, 1999 WERE CONCLUDED.
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1 ON MAY 27, 1999, AT 11:00 A.M. COURT CONVENED IN
2 KOSCIUSKO, MISSISSIPPI, FOR POST TRIAL MOTIONS IN CAUSE NUMBER
3 B2401-98-00960 IN THE FIRST JUDICIAL DISTRICT OF THE CIRCUIT
4 COURT OF HARRISON COUNTY, MISSISSIPPI. PRESENT REPRESENTING
5 THE STATE OF MISSISSIPPI WERE HONORABLE DOUG EVANS, DISTRICT
6 ATTORNEY, AND HONORABLE KEVIN HORAN, ASSISTANT DISTRICT
7 ATTORNEY. PRESENT REPRESENTING THE DEFENDANT WERE HONORABLE
8 CHOKWE LUMUMBA AND HONORABLE HARVEY FREELON, AND HONORABLE JOHN
9 GILMORE, ATTORNEY AT LAW, DURANT, MISSISSIPPI, WAS PRESENT.
10 THE DEFENDANT WAS ALSO PRESENT.

11 BY MR. LUMUMBA: Are we prepared to proceed?

12 **BY THE COURT:** I am ready when y'all are.

13 BY MR. LUMUMBA: Okay. We need to call the case
14 or something like that?

15 **BY THE COURT:** I will call it, yeah. This is in
16 the Circuit Court of First Judicial District of Harrison
17 County, cause number B2401-98-00960, State of Mississippi
18 versus Curtis Giovanni Flowers. It is before the Court on
19 a motion for a JNOV or in the alternative Motion for New
20 Trial.

21 BY MR. LUMUMBA: Okay. One of the things, we
22 had an opportunity to talk to colleague counsel and, Mr.
23 Gilmore, and he was indicating that perhaps we can dispose
24 of anything that has to do with him before we get on with
25 the other motions. What I would, and I'm going to try to
26 proceed in that way so he doesn't have to be present for
27 everything else. One of the things I was going to ask the
28 Court is if the Court didn't have a problem with it, and
29 we consulted with my client on that. He is here for any

1 kind of inquiry that the Court wants to put to him. We
2 would ask that we be appointed to represent him - his
3 family doesn't have any money; he is absolutely indigent;
4 there is no question about that; I think he has been in
5 jail long enough to be indigent - on the remaining two
6 cases as far as the trial cases.

7 We would also be requesting, and if necessary, we
8 will put this in a motion. At the same time we are going
9 to make a motion to withdraw from the case that we just
10 handled, other than these motions that we want to do right
11 now, and the reason for that is that we are fully prepared
12 to try the two remaining cases. My office, you know, I
13 mean in my opinion an appeal in a capital murder case is a
14 matter of specialty, and I don't believe that very many
15 attorneys are equipped to handle those and at the same
16 time be trying to try other capital murder cases. It is
17 something that attorneys do, but quite frankly, those of
18 us who are in the Bar and who discuss it at seminars and
19 elsewhere feel that it is a thing that should be
20 discouraged, and I certainly don't want to be party to it
21 myself. I believe that he deserves a lawyer that can give
22 this case a fresh look, a lot of time, exhaustive amount
23 of time actually, and I just don't believe that we are set
24 up to do that. And I don't think that any lawyer who is
25 at the same time preparing for this as a capital murder
26 case and perhaps some other ones would be in a position to
27 give his case that kind of a look.

28 **BY THE COURT:** Well, in light of the fact of
29 what y'all's representation to me at the, back when we

1 were in Tupelo was that you represented him for this trial
2 only and that you did not represent him on an appeal. In
3 light of that and in light of what the Supreme Court ruled
4 on the first case where Mr. Gilmore had a contract, a
5 written contract to that same extent, and they held that I
6 must appoint somebody on appeal, I will appoint somebody
7 to handle the appeal on this case. And I will grant you
8 the right to withdraw on this case in line with what the
9 Supreme Court has told me I have got to do.

10 BY MR. LUMUMBA: Okay. And in the second part
11 of that motion I'm asking is that, and I think Mr. Gilmore
12 is willing to go along with that; I mean you can ask him,
13 but I would ask that we be appointed as the attorneys on
14 the two remaining trials.

15 BY THE COURT: Okay, I will let you make a
16 written motion to that effect, and I will take that under
17 advisement. Okay.

18 BY MR. JOHN GILMORE: Your Honor, also--

19 BY THE COURT: --But, no. I need to ask your
20 client a question. I think I have asked him before, and
21 maybe I did not understand it.

22 Mr. Flowers, I don't remember back in Tupelo. Did
23 you tell me that it was your desire that Mr. Gilmore,
24 neither of the Mr. Gilmores, no longer represent you in
25 any case, in any of these cases?

26 BY THE DEFENDANT, MR. FLOWERS: You talking
27 about the other cases that was awaiting trial?

28 BY THE COURT: Okay, that's what I'm asking you.
29 Do you want them as your attorneys any more? Mr.

1 Gilmore?

2 BY THE DEFENDANT, MR. FLOWERS: No, sir.

3 BY THE COURT: Okay. In that case, Mr. Gilmore,
4 in line with that, then I'm going to sustain your Motion
5 to Withdraw on those two cases at this time.

6 BY MR. JOHN GILMORE: Thank you, Your Honor.

7 BY THE COURT: On the appointment of counsel, I
8 will take that under advisement. He will have
9 representation, but I need for y'all to file a written
10 motion on it. Okay?

11 BY MR. JOHN GILMORE: Do I need to renew my
12 motion since it is already in writing?

13 BY THE COURT: It is already in writing, and I
14 take note of the fact that I think I would not allow you
15 to withdraw at that time because he would not have had
16 representation on these next two, on these two cases. I
17 now determine that if those are to go forward, he will
18 have to have appointed counsel, so--

19 BY MR. JOHN GILMORE: Would you like me to
20 submit a written order?

21 BY THE COURT: Yes, sir. You can submit an
22 order to that effect.

23 BY MR. JOHN GILMORE: May I be excused, Your
24 Honor?

25 BY THE COURT: Yes, sir. You may.

26 (Mr. Gilmore leaves the courtroom.)

27 BY MR. LUMUMBA: Okay, and we will give you an
28 order-- I mean we will give you a motion on the issue of
29 assigning us to this case. I think there is case law that

1 would hold that where you have an attorney that is
2 familiar with the client's case and has actually
3 represented him in a similar or the same proceeding
4 before, that there is a preference in the law that that
5 attorney be appointed to stay with the client as opposed
6 to somebody fresh that knows nothing about the case. So
7 that would be the basis that we seek to be appointed to
8 these two remaining cases. As far as--

9 **BY THE COURT:** --The only thing, let me say this
10 about that because you know what comes up always on
11 appeal. Whether it's you or Mr. Gilmore or anybody else,
12 there is generally a -- and I don't know who is going to
13 get appointed to do this appeal, but if they do like every
14 other one I ever messed with, they are going to cite
15 ineffective assistance of counsel. And if they do that,
16 that is going to put me in a terrible position about
17 appointing y'all for the trial. Y'all submit me the
18 motion, send me the case law, and I will be glad to look
19 at it.

20 **BY MR. LUMUMBA:** Right. And we will give you an
21 affidavit from our client which will waive any conflicts
22 or any objections.

23 **BY MR. EVANS:** I don't think that can be waived.

24 **BY MR. LUMUMBA:** Well, you can't--

25 **BY THE COURT:** --He could waive ineffective
26 assistance, I guess, couldn't he?

27 **BY MR. EVANS:** Yeah, if he wants to waive that,
28 we will accept that part.

29 **BY MR. LUMUMBA:** Well, I don't know that he is

1 going to waive ineffective assistance in this case that we
2 just tried. But I think that he can-- well, we will give
3 you an affidavit which will state his position.

4 **BY THE COURT:** Okay, that is fine.

5 BY MR. LUMUMBA: We will give you an affidavit
6 that will state his position as considered. But in any
7 event, the--

8 **BY THE COURT:** Oh, I need one other thing too.
9 One other thing does need to be done in that. He needs--
10 there probably is already something in the file, but I
11 think probably because of what I have just done on the
12 appeal, there needs to be a new pauper's oath and that
13 kind of stuff.

14 BY MR. LUMUMBA: New what?

15 **BY THE COURT:** New pauper's oath and whatever
16 you have got to do.

17 BY MR. LUMUMBA: Oh, okay.

18 **BY THE COURT:** In forma pauper's appeal asking
19 the Court to authorize that the costs of the transcripts
20 and stuff be paid.

21 BY MR. LUMUMBA: Okay, that will work. That
22 will work. Okay, let me raise this here. Well, the other
23 thing that we want to do, Judge, in order to perfect our
24 record, we would like to have incorporated into the record
25 and into this file as a Court's exhibit associated with
26 the voir dire and the jury selection of this case all of
27 the questionnaires of jurors who were potential jurors as
28 well as jurors who were actually chosen on to the panel.
29 We would want that because we feel that that would-- there

1 were things in those questionnaires which we raised in our
2 challenges for cause.

3 **BY THE COURT:** I think that is part of the
4 record.

5 BY MR. LUMUMBA: So all those are part of the
6 record?

7 **BY THE COURT:** Yeah.

8 BY MR. LUMUMBA: Okay.

9 **BY THE COURT:** You should probably put that in
10 there when you designate the record to the clerk. You
11 should designate those as being part of the record.

12 BY MR. LUMUMBA: But the clerk will have all of
13 those?

14 **BY THE COURT:** I am assuming that she does.

15 BY MR. LUMUMBA: All right, sir. Maybe we
16 should call and make sure.

17 BY MR. HORAN: Your Honor, I can represent to
18 the Court that I talked with Ms. Locke in Harrison
19 County. And she specifically told me that all the
20 questionnaires, even some of the questionnaires that were
21 not in the record, the Supreme Court had already called
22 her about putting in the record, so she was in the process
23 of doing that three weeks ago when I was down there.

24 **BY THE COURT:** Yeah, and let me say this. I'm
25 getting ahead of myself. You are not going to be the
26 lawyer that designates the record, so you should
27 communicate that to whoever that lawyer is so that they
28 will know that. That is how it gets down there, not
29 through my order unless it was supplementing the record,

1 and I think that is a part of the record. So that just
2 needs to be in the designation when it is sent to the
3 Supreme Court.

4 BY MR. LUMUMBA: Okay. Well, I will make sure
5 we communicate that. I am sure he will talk to us, and we
6 will find-- as soon as we know who is appointed, we will
7 talk to him.

8 The other thing is the question of the motion that we
9 have. We made a Motion for a Judgment NOV. We want to
10 reincorporate by reference all the prior motions that we
11 have made in this case which would have disposed of the
12 case conclusively like the Motion for a Speedy Trial and
13 Motion for Double Jeopardy and various other pretrial
14 motions. We are not going to reargue those, but I am just
15 saying that that is reincorporated into our Motion for the
16 Judgment NOV. We also would reference the many arguments
17 we have made at the directed verdict stage as it related
18 to the reasons why this case should have been dismissed at
19 that point.

20 And we would focus at this time on two important
21 things. Number one is in totality in this case, you
22 actually have only two things that they could argue
23 looking at the case in the light most favorable to the
24 prosecution. One is the tiniest amount of the gunshot
25 residue that is ever available to anybody in order to make
26 a determination that it is gunshot residue. And secondly,
27 physically speaking, you have a print, a foot impression.
28 It is more properly called an impression as opposed to a
29 print. A, the residue is not associated with any gun in

1 particular. There is no proof that the gun in question
2 was the gun which actually caused the deaths in this
3 case. There are all kinds of ways that residue occurs on
4 people's hands, and in fact, the only person who they did
5 a test on for residue was our client.

6 In fact, I was watching "In the Heat of the Night"
7 just-- this is just coincidentally, and this was since the
8 time of this trial. And the exact argument that I made
9 during closing argument -- the Sheriff in that case was,
10 or the chief of police, I can't even remember what his
11 name is. It's a famous actor. I can't even think of his
12 name. He said exactly the same thing. They were talking
13 about doing a residue test on somebody. He said well, if
14 we do a residue test on everybody in town, probably 90
15 percent of them would come up with residue on their hands.
16 And that is probably true here too. I don't know if it is
17 quite still as high as 90 percent. I don't know if people
18 shoot guns that often any more, but it is pretty high. So
19 I think that-- and not only shooting guns, touching guns,
20 touching things that have been contaminated by guns. That
21 to me is not a conclusive type of evidence.

22 And then finally what you have is a print which could
23 have matched any more than over 600,000 shoes. We have
24 already had the argument. But even we don't know that the
25 person who left the print is the person who did the
26 shooting or who left the impression is the person who did
27 the shooting. All of these are piling inferences upon
28 inferences upon inferences. We think, and we objected to
29 the evidence that was entered in the attempt to establish

1 a motive, and we think that it was objectionable. But
2 number two, it is also inconclusive itself. It absolutely
3 doesn't even get close to establishing a serious motive in
4 this case.

5 And finally, the circumstantial evidence in
6 relationship to the sojourn of the Defendant allegedly on
7 this day in question is contaminated by inconsistent
8 testimony, contaminated by testimony which didn't even
9 arise until after the time in many instances that a reward
10 was offered or many months later for whatever the reason
11 for the delay was, and by the weakest of identifications
12 as far as Porky Collins is concerned. I don't think I
13 have ever seen a case that had a weaker identification
14 than the Porky Collins identification; not only in terms
15 of what comes out of his mouth, but the circumstances
16 surrounding the identification.

17 And then you have probably the strongest evidence in
18 the case is Katherine Snow's testimony which is supposed
19 to have our client standing next to a vehicle where a gun
20 may have been. She didn't see a gun. She doesn't know a
21 gun was there. The fellow who claims the gun was in there
22 at some point is the same fellow who lied about where the
23 gun came from, and he can't even say it was there because
24 he had come out two or three times prior to him parking
25 the car there and didn't see it there. I mean he didn't
26 look for it, but he didn't know whether it was there or
27 not. Nothing is done to exclude the possibility that
28 somebody else may have been in the car, may have taken the
29 gun from the car, or that somebody else, that the gun

1 never was there and that he was just lying on a couple of
2 occasions, not only the time that he has admitted to
3 lying, but other occasions. So all of that is there.

4 But not quibbling about interpretations of the
5 evidence but looking at the quantum of evidence and
6 actually the quality of evidence, it is our absolute view
7 that this case in no way justifies the verdict of the
8 jury, and it doesn't justify it on a capital murder case.
9 It doesn't justify it, you know, based upon the evidence
10 that the front of this-- it certainly doesn't justify it
11 on a robbery. The allegations of a robbery are absolutely
12 speculative. There is no chain of evidence or any kind of
13 demonstration from 10:00 in the morning when there is a
14 theory that the lady went to, went to the bank--

15 BY MR. FREELON: No, Sam Jones.

16 BY MR. LUMUMBA: Well, from the time that Sam
17 Jones arrived at 10 o'clock until the time of 1 o'clock in
18 the afternoon or 2 o'clock when the evidence technicians,
19 there is no testimony at all what was happening with the
20 drawers or whether anybody went in or went out of them.
21 We also got, don't have any-- we have some things actually
22 that contradicts the question of robbery. There is an
23 allegation there first of all, the motive which is
24 supposed to be described for the Defendant would suggest
25 that it had nothing to do with a robbery. But secondly,
26 the situation with the jewelry that was left on people;
27 money was left in people's purses. Some money was left in
28 the cash register, although it was change, but it may have
29 only been change there to start off with, so we don't

1 really know. So we don't have enough evidence to say that
2 there was a robbery. We don't know that the money wasn't
3 taken out of the cash register after the incident was
4 completely over, after the people were already dead. In
5 fact, I notice in the newspaper articles a lot of them
6 were saying that the motive was not robbery and that the
7 authorities were saying the motive was not robbery
8 initially in the case.

9 So those are all things which I believe cut against
10 the whole robbery question. So without a robbery, you
11 don't have a capital murder. And even in this case given
12 the tenuous connection of the Defendant to the case where
13 you have to be reminded of Tyson and Edmund where they say
14 that a person, even if he is involved in the crime, has to
15 have a certain amount of participation, and if you focus
16 in upon the Mississippi statute, you would have to focus
17 right to the point where they say that you have to prove
18 that he either killed, intended to kill, anticipated the
19 use of lethal force, and one of those three things, as far
20 as this case is concerned, would have to be proven. That
21 was not proved. Even if someone could say that the chain
22 of people who all saw different clothing on the same day
23 of this man supposed to be going in that direction that
24 they talk about months later, if that was considered to be
25 conclusive, nobody puts him in the store. Nobody sees him
26 leaving the store.

27 The closest he is seen to the store, according to one
28 of the witnesses who was contradicted by at least three
29 other witnesses, her own family members as to what was

1 supposed to happen, was that he was 75 yards away at the
2 time she saw him. And that, and when Porky Collins'
3 testimony to look at, he sees him walking in a different
4 direction from the store. He is not going to the store.
5 He is going toward Coast to Coast. He sees somebody going
6 that way, a man that he got a brief glance at. So nobody
7 puts him in the store even in the best of the testimony.

8 So I think that you are not able to make these kinds
9 of conclusive assumptions and inferences on inferences,
10 you know, to put somebody to death. I think Edmund and
11 Tyson would tell you that. So I don't think there is
12 sufficient proof to show that anybody, this particular
13 person anticipated the use of any lethal force as far as
14 that he killed or attempted to kill.

15 So I think that in itself is fatal and puts to death
16 the legal attempt to put him to death. So I think that A,
17 we would challenge the conviction based on the evidence,
18 that it was insufficient. We specifically challenge the
19 robbery, and we specifically challenge that there was
20 sufficient showing in order to justify a death penalty.
21 So those are the things that we would put before the Court
22 at this time. Okay, those are the things we put before
23 the Court in this Motion for a NOV as well as a Motion for
24 New Trial. Those are our positions.

25 **BY THE COURT:** Okay. Mr. Evans.

26 BY MR. EVANS: Your Honor, the State is not
27 going to go back through all the evidence of the case.
28 The Court heard the case. The State would merely state
29 that we clearly proved that this Defendant was guilty.

1 The jury found that he was guilty. The jury found the
2 Edmund factors to be present, and the jury found the
3 aggravating factor to be present. The jury further found
4 that any mitigators did not outweigh the aggravating
5 factor, and they properly did so. The Court heard all the
6 evidence that we had in this case, and there was
7 substantial evidence to prove his guilt.

8 **BY THE COURT:** The Court now has, of course,
9 heard the evidence like everybody else. That evidence
10 presents a question of fact for the jury to decide, and
11 they resolved it, and I don't think that their verdict was
12 against the overwhelming weight of the evidence as the law
13 defines that. And so I find no merit to that ground.

14 In the other, there are six other grounds that the
15 Defendant has raised in his Motion for JNOV and in
16 alternative, Motion for New Trial. The Court has had this
17 motion for-- well, it was filed April 8th, so I got it
18 sometime thereafter. I have considered each of those
19 points raised. All of those points were raised at trial
20 by the Defendant. They were considered at trial by this
21 Court. And the Court having looked at this Motion and
22 reconsidered what he did at that time, finds that those,
23 the Court's actions at that time were not error and were
24 the correct rulings. And therefore, the Motion for JNOV
25 and in the alternative, Motion for New Trial is
26 overruled.

27 Mr. Evans and Mr. Horan, you can furnish me an order
28 to that effect.

29 BY MR. EVANS: Yes, sir.

1 **BY THE COURT:** And if y'all will furnish me
2 orders for the other things. Anything else?

3 (Pause while Defense Counsel confer.)

4 **BY MR. LUMUMBA:** Where is the next trial
5 scheduled to take place right now?

6 **BY THE COURT:** It's not yet-- well, I guess it
7 is still in Tupelo.

8 **BY MR. LUMUMBA:** I mean what jurisdiction is it
9 in?

10 **BY THE COURT:** It's in, the other two are still
11 in Tupelo.

12 **BY MR. HORAN:** Your Honor, I would like a
13 setting. As the Court well knows that after the last
14 trial, the time would be running against the State.

15 **BY THE COURT:** Well, it's not going to be
16 running now because he has filed-- he has fired his lawyer
17 on those two cases. He has filed a motion to have new
18 counsel appointed to that, and that would toll that until
19 such time as he has a lawyer who could agree to a setting.

20 **BY MR. HORAN:** Can I submit an order to that
21 effect?

22 **BY THE COURT:** Sure. That's what the situation
23 is.

24 **BY MR. HORAN:** That's all we have.

25 **BY MR. LUMUMBA:** There was a selection given to
26 us in the mail of a case. Whose case was that? I saw the
27 file number, but I didn't associate--

28 **BY THE COURT:** I'm sorry. What?

29 **BY MR. LUMUMBA:** I saw the file number, but I

1 didn't associate that with a deceased. There was a
2 selection, I think, in the mail.

3 **BY THE COURT:** As to what?

4 BY MR. LUMUMBA: Which person, which case they
5 are going to try next.

6 BY MR. EVANS: We haven't elected which one--

7 BY MR. HORAN: --I did a notice, I think.

8 **BY THE COURT:** I didn't pay, to be honest with
9 you, didn't pay any attention to that, so I don't know.

10 BY MR. EVANS: As soon as he gets an attorney,
11 we will make an election which one we decide to go with
12 next.

13 BY MR. LUMUMBA: All right.

14 **BY THE COURT:** Okay, and I will-- I tell you
15 what; I will do that as soon as y'all get the orders to me
16 to--

17 BY MR. LUMUMBA: --Okay, we are furnishing you
18 an order to withdraw as attorneys--

19 **BY THE COURT:** --counsel in that case.

20 BY MR. LUMUMBA: Right. And then we will
21 furnish you with a motion to be appointed to this case.

22 **BY THE COURT:** For the other two cases.

23 BY MR. LUMUMBA: Yeah, that's right.

24 **BY THE COURT:** That's right. So--

25 BY MR. LUMUMBA: Right. That will work. Okay.

26 **BY THE COURT:** Court is adjourned.

27 END OF TRANSCRIPT

28

29

COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI

COUNTY OF HARRISON

I, Mrs. Linda F. Burchfield, Official Court Reporter for the Fifth Circuit Court District of the State of Mississippi and special reporter on this case by virtue of change of venue from Montgomery County, Mississippi, do hereby certify that to the best of my skill and ability, I have reported the proceedings had and done in the trial of State of Mississippi versus Curtis Giovanni Flowers being No. B2401-98-00960 on the docket of the Circuit Court of the First Judicial District of Harrison County, Mississippi, and that the foregoing 2,982 pages contain a true, full, and correct transcript of my stenographic notes and tape taken in all pre-trial, trial and post trial proceedings.

This is to further certify that I have this date sent via U.S. Mail for filing the original and one copy of said transcript, along with five (5) 3.5" electronic disks of said transcript in ASCII language, for inclusion in the record on appeal with the Clerk of the Circuit Court of the First Judicial District of Harrison County, Mississippi, and have notified the attorneys of record, the Circuit Clerk, and the Supreme Court Clerk of my actions herein.

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Cause No. B2401-98-00960

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This the 16th day of November, 1999.

Linda F. Burchfield

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